SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1917.

No. 786.

GABE E. PARKER, GABE E. PARKER, AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER, AND W. M. BAKER, AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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a Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the September term, 1917, of said court, before the Honorable John E. Carland and the Honorable Kimbrough Stone, circuit judges, and the Honorable Thomas C. Munger, district judge.

Attest:

[SEAL.] E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit: on the thirtieth day of September, A. D. 1916, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Eastman Richard et al., etc., were appellants and Gabe E. Parker et al., etc., were appellees, which said transcript as prepared, printed and certified by the clerk of said District Court in pursuance of an act of Congress approved February 13, 1911, is in the words and figures following, to wit:

1 In the United States District Court for the Eastern District of Oklahoma.

Pleas and proceedings before the Honorable Ralph E. Campbell, judge of the District Court of the United States for the Eastern District of Oklahoma, presiding in the following entitled cause:

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, plaintiffs,
vs.
GABE E. PARKER, and GABE E. PARKER, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants. } Equity No. 2322.

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, appellants,
vs.
GABE E. PARKER, and GABE E. PARKER as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellees.

Be it remembered, That this suit was begun in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon

Petition and Bond for Removal; the transcript having been filed in the office of the clerk of the United States District Court for the Eastern District of Oklahoma on the 18th day of August, 1916, and was given Equity No. 2322.

2 The original amended petition being in words and figures as follows:

In the District Court in and for Muskogee County, State of Oklahoma, before Hon. R. P. deGraffenreid, district judge. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, plaintiffs, v. Gabe E. Parker, and Gabe E. Parker as superintendent for the Five Civilized Tribes; W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants.—No. 4971.

First amended petition.

Comes now the plaintiffs herein, Eastman Richard and R. D. Martin, as coadministrators of the estate of Samuel Richard, deceased, and for their first amended petition, in the above numbered and styled cause (which is filed by and with the consent of the court, and the said defendants, Gabe E. Parker and W. M. Baker), and for causes of action, alleges and states:

1. That plaintiffs each and both of them, are residents of McIntosh County, Oklahoma; that the defendants are residents of Muskogee County, Oklahoma, and that this court has jurisdiction of this action.

2. That these plaintiffs, Eastman Richard and R. D. Martin, were by the county court, McIntosh County, Oklahoma, on, to wit: Feb. 29, 1916, duly and legally appointed coadministrators of the estate of Samuel Richard, deceased, and that on the 29th day of February, 1916, these plaintiffs, as principal, together with the Southern Surety Company, as surety, made, executed and delivered their joint and several administrator's bond, according to law, in said cause, in the penal sum of $225,000.00, which said bond was accepted and approved by the county court, a copy of which said bond is hereto attached, marked Exhibit "A" and made a part hereof. That on the 29th day of February, 1916, letters of administration were duly and legally issued by the said county court of McIntosh County, Oklahoma, as aforesaid, to these petitioners, as coadministrators of

3 said estate of Samuel Richard, deceased, a copy of which said letters of administration is hereto attached, marked Exhibit "B" and made a part hereof. That these plaintiffs are the legally appointed, qualified and acting coadministrators of the estate of Samuel Richard, deceased, and as such coadministrators these plaintiffs are entitled to collect and receive any and all monies or other personal properties belonging to said estate.

III.

These plaintiffs further allege and state that the said defendants, Gabe E. Parker, was and is, and has been at all times herein mentioned the legally appointed, qualified and acting superintendent for the Five Civilized Tribes, and that the said defendant, W. M. Baker, was and is and has been at all times herein mentioned, the legally appointed qualified and acting cashier for the Five Civilized Tribes, and that said defendants have collected and received, and have at all times herein mentioned, and now have in their possession, custody and control, the sum of one hundred seventy-five thousand, *eighteen* hundred and eighteen dollars and sixty-seven cents ($175,-818.67) in money belonging to the estate of Samuel Richard, deceased. That these plaintiffs are entitled to the possession of all of said monies belonging to the estate of Samuel Richard, deceased, as aforesaid, and that the said defendants, each and both of them, as aforesaid, have unlawfully, and do now unlawfully retain in their possession, custody, and control the aforesaid sums of money.

IV.

Plaintiffs further allege and state that their said intestate, the said Samuel Richard, was during his lifetime, a full-blood citizen of the Creek Nation, and enrolled upon the approved rolls of the Dawes Commission, opposite No. 7668, and that there was duly allotted and patented to the said Samuel Richard, as said allottee of the Creek Tribe of Indians, an allotment of land consisting of 160 acres of land, described as the southwest quarter (SW.4) of section 4, township 17 north, range 7 east, of the Indian base and meridian, according to the U. S. survey thereof, within the State of Oklahoma, and that these plaintiffs' intestate, the said Samuel Richard, being the owner in fee simple title to the above described 160 acres of land, and being then a minor under the age of 21 years, did, on, to wit, April 13, 1912, by his then legal guardian, Eastman Richard, make,
4 execute and deliver a certain oil and gas mining lease upon the above-described lands, to the Kathleen Oil Company, a corporation, as lessee, and that the said lease was duly approved by the proper officials then having jurisdiction thereof, by reason of the said minority of the said Samuel Richard. That under the terms of the said lease it was and is provided that the lessee agrees to pay or cause to be paid, to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, or his successor, as trustee, for the use and benefit of said lessor, as royalty, the sums of money representing 12½% of the gross proceeds of the sale of all crude oil extracted from said lands. The original of which said lease is in the possession of said defendants who are hereby notified to produce same at the trial of this cause, or secondary evidence will be introduced as to its contents.

V.

Plaintiffs further allege and state that under the terms of said lease it was and is provided that in the event the restrictions on alienation shall be removed from the leasehold premises described above, said lease shall be removed from the supervision of the Secretary of the Interior, such release to take effect without further agreement from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior, as therein provided, shall cease, and all payments required to be paid to the United States Indian superintendent, shall thereafter be made to the said lessor, or the then owner of said lands.

VI.

These plaintiffs further allege and state that they have been informed and believe, and therefore charge, that the said defendants, have collected, and have at all times herein mentioned, and have now in their possession, custody and control the sum of $175,818.67, in money belonging to the estate of said Samuel Richard, deceased. That said defendants as trustees of plaintiffs' intestate and estate, collected same from the lessees under said lease as royalty due said estate by reason of the sale of oil as provided for in said lease, and that the dates and various amounts so collected by said defendants is within the personal and peculiar knowledge of said defendants.

VII.

These plaintiffs further allege and state that said Samuel Richard died on January 24, 1916, and thereafter on, to wit, March 1, 1916, plaintiff by and with the consent of the lessee and owner of said lease, revoked, renounced, cancelled and terminated the appointment of the said defendants as trustees under said lease to collect the royalties accruing thereunder and terminated said trusteeship and notified the defendants thereof, and requested that the said defendants pay to these plaintiffs monies then held by them as trustees of plaintiffs' estate, but that the said defendants did then, and now refuse to surrender possession of the monies collected by them as trustees of plaintiffs' estate, and refuse to pay same to these plaintiffs. That these plaintiffs are entitled to possession of all monies belonging to estate of Samuel Richard, deceased, which are being held by said defendants, each and both of them as aforesaid. That said sums of money held by said defendants have by them been and are now illegally held and retained in their possession, custody, and control.

VIII.

These plaintiffs further allege and state (in addition to the revocation and termination made by them of the trusteeship, as herein-

above stated): That by reason of the death of the said Samuel Richard, as aforesaid, on the 24th day of January, 1916, that all restrictions upon the alienation of the lands covered by said lease, were then by operation of law removed beyond under the acts of Congress, relating and pertaining thereto, and that by reason of the death of said Samuel Richard, that the said monies held by said defendants, and the proceeds accruing from said lease, did then and there (if they were at that time restricted) immediately became unrestricted, and that the said defendants had and have no further jurisdiction or lawful right to hold possession of said sums of money, or any part thereof, and that the said defendants since the death of the said Samuel Richard, as aforesaid, have illegally, unlawfully, and without authority of law, held and retained all of the aforesaid sums of money.

IX.

Plaintiffs further allege and state that they have been informed and believe and therefore charge that since the death of the said Samuel Richard on Jan. 24, 1916, as aforesaid, that the said defendants have collected the sum of approximately $50,000.00, the exact amount of which is unknown to plaintiffs, but is within the personal and peculiar knowledge of said defendants, and that unless restrained by proper order of this court, will continue to collect further sums of money belonging to said estate, the amounts of which are unknown to these plaintiffs, but which is within the personal and peculiar knowledge of defendants, and that the said money so
6 collected by them since the death of the said Samuel Richard, as aforesaid, was illegally collected, and is held by them illegally and without lawful authority. That said defendants should be required to render an accounting to this court (in addition to the above stated sum of $175,818.67) of all monies received and collected by them since Jan. 24, 1916, as aforesaid, as well as an accounting of all monies that may be collected by them until the termination of this suit.

X.

Plaintiffs further allege and state that on March 1, 1916, and on several occasions thereafter, and prior to the institution of this action, they made both oral and written demands of said defendants for the aforesaid sums of money, and for all monies which they have in their possession, custody or control belonging to the estate of said Samuel Richard, deceased. That said defendants have refused and wholly declined to deliver to these plaintiffs said sums of money, or any part thereof. That these plaintiffs have been entitled to the possession of the same ever since March 1, 1916, as aforesaid, and that they are now entitled to the possession thereof.

Wherefore plaintiffs pray:

(a) That the said defendants, and each and both of them be required to render into this court an accounting of all monies or personal property belonging to the estate of the said Samuel Richard, deceased, which they have in their possession, custody or control.

(b) That the said plaintiffs be decreed a judgment against said defendants, and each and both of them in the sum of $175,818.67, in money, as well as for any and all other monies or personal properties which the court may find that they have in their possession, custody or control, together with interest at the rate of 6% per annum, from March 1, 1916.

(c) That said defendants be restrained from collecting any monies due plaintiffs.

(d) That the plaintiffs do have and recover all costs therein accrued.

(e) That the plaintiffs, have all general, special and equitable relief to which they may be justly entitled.

EASTMAN RICHARD and R. D. MARTIN,
Coadministrators of Estate of Samuel Richard, Deceased.
By LUCAS & TABOR, *Attys. for plaintiffs.*

7 *Administrator's or executor's bond.*

STATE OF OKLAHOMA,
McIntosh County, ss:
In the matter of the estate of Samuel Richard, deceased.

Know all men by these presents: That we, R. D. Martin, Checotah, Oklahoma, and Eastman Richard, Pierce, Oklahoma, as principals, and Southern Surety Company of Denison, Oklahoma, as surety, are held and firm firmly bound unto the State of Oklahoma, in the penal sum of two hundred twenty-five thousand, and no/100 ($225,000.00) dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

The conditions of the above obligation is such, that Whereas, by order of the county court of McIntosh County, State of Oklahoma, made and entered on the 29th day of February, A. D. 1916, the above-named principals was appointed coadministrators of the estate of Samuel Richard, deceased, and letters testimentary were directed to issue to said principal, upon their taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of two hundred twenty-five thousand and no/100 ($225,000.00) dollars, with two or more sureties to be approved by the judge of said court.

Now, if the above bounden principals shall faithfully execute the duties of such trust as such coadministrators according to law, then this obligation to be void, otherwise to remain in full force and effect.

In witness whereof, we have hereunto subscribed our names, this 29th day of February, A. D. 1916.

[SEAL.]

R. D. MARTIN,
EASTMAN RICHARD,
Southern Surety Company.
By W. F. MOFFAT,
Attorney-in-fact.

I hereby approve the above bond this 29th day of Feb., 1916.

JOHN W. ROBERTSON, *County Judge.*

(Endorsed on back as follows:) "No. 247—Estate Samuel Richard, Decd. Filed Feb. 29, 1916, W. B. Young, Court Clerk. (Ex. "A.")

8 *Letters of administration.*

STATE OF OKLAHOMA,
McIntosh County, ss:

In County Court, sitting at Checotah, Okla. In the matter of estate of Samuel Richard, deceased.

Eastman Richard and R. D. Martin are hereby appointed administrators of the estate of Samuel Richard, deceased.

Witness, John W. Robertson, judge of the County Court of McIntosh County, State of Oklahoma, with the seal thereof affixed this 29th day of February, A. D. 1916.

[SEAL.] JOHN W. ROBERTSON, *County Judge.*

STATE OF OKLAHOMA,
McIntosh County, ss:

I, Eastman Richard, and R. D. Martin do solemnly swear that I will discharge all and singular the duties of administrator of the estate of Samuel Richard, deceased, according to law, and to the best of my ability. So help me God.

[SEAL.]

EASTMAN RICHARD.
R. D. MARTIN.

Subscribed and sworn to before me this 29th day of February, 1916.

JOHN W. ROBERTSON, *County Judge.*

(Ex. "B.")

(Endorsed:) No. 4971. In the District Court in Muskogee County. Eastman Richard and R. D. Martin, administrators of estate of Samuel Richard, decd., Plaintiffs, vs. Gabe E. Parker, Gabe E. Parker, Supt. for Five Civilized Tribes, W. M. Baker and W. M. Baker, cashier for Five Civilized Tribes, Defts. First amended petition. District Court, State of Oklahoma, County of Muskogee, Filed Jul. 29, 1916, C. H. Shaffer, Court Clerk.

(Endorsed:) Filed Aug. 18, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to wit, on the 30th day of August, A. D. 1916, the defendants filed their answer herein, which is in words and figures as follows:

In the District Court of the United States for the Eastern District of Oklahoma.—Eastman Richard and R. D. Martin, coad-
9 ministrators of the Estate of Samuel Richard, deceased, Plaintiffs, v. Gabe E. Parker, Gabe E. Parker, Superintendent for the Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for the Five Civilized Tribes, defendants.—No. 2322 Equity.

Answer.

The defendants and each of them, answering the first amended petition herein filed, allege:

I.

That the defendant, Gabe E. Parker, is an officer of the Interior Department of the United States and is designated as Superintendent for the Five Civilized Tribes and that as such officer he is charged and entrusted with the duty of generally supervising the affairs of all Indians and particularly the restricted Indians, so-called, of the Five Civilized Tribes, among whom is the Creek Tribe of Indians.

That the defendant, W. M. Baker, is an officer of the United States and of the Interior Department thereof, designated as cashier for the Five Civilized Tribes, and his duties as such cashier are to receive and disburse according to law all sums of money properly entering into his possession and control as portions of the funds of the Five Civilized Tribes and the individual members thereof.

II.

That as to whether Eastman Richard and R. D. Martin are the duly and legally appointed administrators of the estate of Samuel Richard, deceased, defendants are not advised; nor are defendants advised as to whether Samuel Richard is now deceased and of these facts defendants demand strict proof. But your defendants allege that Samuel Richard was enrolled as a member of the Creek Tribe of Indians of the full blood, opposite number 7668 upon the approved rolls of said tribe and that there was allotted to him as his share of the tribal lands the southwest quarter of section four (4), township seventeen (17) north, range seven (7) east of the Indian base and meridian, which said lands were on the 13th day of April, 1912, by virtue of certain congressional laws designed to protect the said

Samuel Richard, incapable of alienation for a period of approximately nineteen years from said date unless the Secretary of the Interior should sooner cause the restrictions to be removed therefrom. That on said date the allottee thereof, Samuel Richard, was incapable of leasing the said lands for oil, gas or other mineral purposes save with the approval of the Secretary of the Interior and under such rules and regulations as the said Secretary of the Interior might provide, and that on to wit, the said 13th day of April, 1912, the said Samuel Richard, who was then a minor under the age of twenty-one years, did execute by his guardian, Eastman Richard, a certain oil and gas mining lease upon the above described lands, which said lease was duly approved by the county court having jurisdiction of the estate of the said minor, and which said leases was on a form prescribed by the rules and regulations of the Secretary of the Interior, and was duly approved by the Secretary of the In-[terior]. A copy of said lease showing the approval of the Secretary of the Interior is hereto attached, made a part hereof and marked "Exhibit A." Under the terms of said lease and pursuant to the operation thereof there has accrued in the hands of the defendants up to and including the date of the filing of this petition, the sum of $216,152.15, which said sum of money has been received at various times and in varied amounts, a complete account of which would be inconvenient to detail in this petition. But your defendants offer to produce to this court, or any person authorized thereby, all books and papers pertaining to the account of the said Samuel Richard, and stand ready to account at any and all times to this court or to any person properly designated by this court for all sums accrued or hereafter to accrue in their hands by virtue of mining operations under said leases.

III.

Your defendants further allege that the said Samuel Richard, if he be in fact dead, left as his sole and only heir at law one Eastman Richard, one of the plaintiffs in this cause, who is a full-blood Indian of the Creek Tribe and who by the death of the said Samuel Richard, if he be in fact dead, became and now is the sole owner of all the property, both real and personal, of which the said Samuel Richard died seized and possessed; and that said property descended to said Eastman Richard free and discharged of all debts accruing during the lifetime of the said Samuel Richard and said property is not subject to administration in any manner or form whatever. And defendants say that the proceeds of the said oil and gas mining leases are, by virtue of the rules and regulations of the Secretary of the Interior, pertaining to the funds so received and by virtue of the laws of the United States of America provided for the protection of the said Samuel Richard and all his full-blood heirs, restricted trust funds subject to the control of the Secretary of the Interior as the

officer of the United States charged with the duty of enforcing
11 the protection of the United States as a sovereign over its wards, the dependent Indian tribes and the individual members thereof and particularly over the said Samuel Richard, and his full-blood alleged heir, Eastman Richard, one of the plaintiffs herein.

IV.

Your defendants allege that the said allotment of Samuel Richard hereinabove described has at all times since the death of the said Samuel Richard, if he be in fact dead, been the property of the said Eastman Richard and is still owned and controlled by him.

V.

Your defendants and each of them deny that said death of the said Samuel Richard, if said death has in fact occurred, on the 24th day of January, 1916, operated to remove all restrictions upon the alienation of the lands covered by the aforesaid lease and allege that said lands continue to be and are restricted, and they further deny that they have no jurisdiction or lawful right to withhold possession of said sums of money so as aforesaid accruing from the operation of the said lease and deny that they now illegally hold the said sums of money; but say that they hold the same as a trust fund created under the laws of the United States and the rules and regulations of the Secretary of the Interior pertaining thereto, for the benefit of the said Samuel Richard and his full-blood heirs, and that they have the right to withhold and disburse said sums of money at such times and in such quantities as they shall deem proper to the said Samuel Richard, or, in the event of his death, to his full-blood heirs.

VI.

Defendants allege that they have no personal interest whatsoever in said sums of money and specifically disclaim as individuals any right, title, or interest therein, but say that they and each of them do hold said sums by authority of the acts of Congress by virtue of which said funds were created and the rules and regulations of the Secretary of the Interior provided pursuant thereto respecting leases of this kind and character; that they and each of them have been, are, and at all times will be willing and ready to abide by the orders of this court or any other court of competent jurisdiction relative to the disposition of the money aforesaid, but respectfully allege that said sums of money so accruing in their hands are not subject to disposition and control save and except by order of the Secretary of the Interior or his duly authorized subordinates.

12 Wherefore, defendants pray that plaintiffs take nothing by this action, but that they be hence dismissed with their

costs, and they have all other and further relief to which they may be in the premises entitled.

GABE E. PARKER,
GABE E. PARKER,
As Superintendent for the Five Civilized Tribes,
W. M. BAKER,
W. M. BAKER,
As Cashier for the Five Civilized Tribes,
By D. H. LINEBAUGH,
United States District Attorney,
and
W. P. MCGINNIS,
and
PAUL PINSON,
Special Assistants to the
United States District Attorney,
Solicitors for Defendants.

EXHIBIT A.

[Stamps and endorsements:

Office of Indian Affairs, received Jul. 7, 1913—84133.
Received Union Agency Jun. 18, 1912. Enclosure to Dept. No. 1963.
Office of Indian Affairs. Received Dec. 27, 1912—132434.
Office of Indian Affairs. Received May 29, 1912. File—53962.
Received Union Agency, Apr. 26, 1912. Enclosure to No. 24865.
Received Union Agency, Dec. 7, 1912. Enclosure to Dept. No. 3701.
Office Indian Affairs. Received Nov. 21, 1912—117220.
Received Union Agency, Jan. 13, 1913. Enclosure to Dept. No. 118.
13 Received Union Agency Jul. 21, 1913. Enclosure to Dept. No. 2472.
Received Union Agency Mar. 3, 1913. Enclosure to Dept. No. 770.
Office of Indian Affairs. Received Feb. 21, 1913—23610.
Roy No. 6057.
Equitable Surety Co.
Apr. 29, 1917. Q.—H. H.
36057 1 Duplicate.]

Form A. Series 1908.—Approved April 20, 1908.
Amended February 6, and June 29, 1911.

Oil and Gas Mining Lease Upon Land Selected for Allotment.

Creek Nation, Oklahoma.

This indenture of lease, made and entered into in quadruplicate on this 13th day of April, A. D. 1912, by and between Eastman Richard,

as the legal guardian of the person and estate of Samuel Richard, a minor of Pierce, Oklahoma, enrolled as a full blood citizen of the Creek Nation, roll No. 7668, party of the first part, hereinafter designated as lessor, and The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L. P. 312), witnesseth:

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the lessee, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to wit: The *The* southwest quarter (¼) of section 4, township 17 north, range 7 east of the Indian meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural
14 gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operation, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance to be calculated from the date of commencement of utilization: Provided, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: Provided, further, That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or near-by tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas

for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

15 3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the election and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The fail-

ure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The
16 lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same ad promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lessee, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-burning startum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of

the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian superintendent all amounts then due as provided herein and
17 the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: Provided, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: Provided, further, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian Office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall
18 be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement,

from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

[SEAL.]

EASTMAN RICHARD,
As guardian of the person and estate of Samuel Richard, a minor.

Attest:
[SEAL.]

H. F. SINCLAIR, *Secy.*

Two witnesses to execution by lessor:
C. L. Thomas, P. O., Muskogee, Okla.
Britton H. Tabor, P. O., Checotah, Okla.

THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Two witnesses to execution by lessee:
E. B. Huston, P. O., Independence, Kansas.
Paul Konz, P. O., Independence, Kansas.

STATE OF OKLAHOMA,
County of Muskogee, ss:

_____ before me, Minnie M. Ford, a notary public, in and for said county and State, on this 13th day of April, 1912, personally appeared Eastman Richard, as guardian of the person and estate of Samuel Richard, a minor, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and in the capacity therein stated.

MINNIE M. FORD.

[SEAL.]

My commission expires February 26, 1916.

19 DEPARTMENT OF THE INTERIOR,
UNITED STATES INDIAN SERVICE, UNION AGENCY,
Muskogee, Okla., May 23, 1912.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

R. S. CATE,
Acting United States Indian Superintendent.

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, D. C., Jun. 5, 1912.

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

F. H. ABBOTT,
Assistant Commissioner.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 8, 1912.

Approved:

CAMIE A. THOMPSON,
Assistant Secretary of the Interior.—H.

Filed for record this 26 day of Apr., 1912, at 3 o'clock p. m. Dana H. Kelsey, superintendent Union Agency, by R. W. Field. Advance royalty received, $24.00.
Duplicate. Roy. No. 6057.

[Stamps and endorsements:

Received Union Agency Jul. 20, 1912. Enclosure to No. 42387.
Office of Indian Affairs. Received Nov. 21, 1912—117220.

Ent. Creek Roy, No. 7017.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

Assignment of oil and gas lease.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:
SE. ¼ of SW. ¼ of section 4, Twp. 17 north, range 7 east (and other lands).

20 Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all its right, title, and interest of the lessee in and to said SE. ¼ of SW. ¼ of section 4, Twp. 17 north, range 7 east lease, subject to the approval of the Secretary of the Interior, to Kemp & Hayden, copartners, composed of E. R. Kemp and John F. Hayden, of Tulsa, Oklahoma.

In witness whereof the said lessee has hereunto set its hand and seal this 2nd day of July, 1912.

[SEAL.] THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest:

H. F. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, a notary public in and for said county and State, on this 2nd day of July, 1912, personally appeared P. J. White, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] ARTHUR NEWLIN.

My commission expires Oct. 3, 1914.

[Endorsement stamp: Received Union Agency Dec. 7, 1912. Enclosure to Dept. No. 3701.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ——,
County of ——, *ss:*

Before me, ——— in and for said county and State, on this — day of ——, personally appeared ——— to me known to be the identical person— who executed the within and foregoing instrument, and acknowledged to me that — executed the same as — free and voluntary act and deed for the uses and purposes therein set forth.

——— ———.

My commission expires ———.

21 ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such

assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set their hand and seal this 27th day of July, 1912.

KEMP & HAYDEN,
By E. R. KEMP,
JNO. F. HAYDEN.

CONSENT OF SURETY.

The Equitable Surety Company of St. Louis, Mo., surety for The Kathleen Oil Company on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at Muskogee Oklahoma this ____ day of July, 1912.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Nov. 29, 1912.

Approved: Subject to the conditions attached to the lease.
LEWIS C. LAYLIN, *Assistant Secretary.—H.*

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Office of Indian Affairs. Received Feb. 21, 1913. 23610.
Received Union Agency Jan. 20, 1913. Enclosure No. 3872.
Creek 6057.
Ent.]

22 Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard,

guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SW./4 of SW./– of section 4, township 17, north, range 7 east; said lease having been assigned to the Tartar Oil Company by due and proper departmental assignment.

Now, therefore, for and in consideration of one dollar ($1.00) *dollars*, the receipt of which is hereby acknowledged, the said Tartar Oil Company, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all of its right, title and interest of the assignee in and to said lease, subject to the approval of the Secretary of the Interior to The Kathleen Oil Company of Tulsa, Oklahoma.

In witness whereof, the said assignee has hereunto set its hand and seal, this fifteenth day of January, 1913.

[SEAL.] TARTER OIL COMPANY,
By HENRY LESCHEN, *President.*

Attest:

W. E. WRISBERG, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF MISSOURI,
City of St. Louis, ss:

Before me, a notary public in and for said city and State, on this fifteenth day of January, 1913, personally appeared Henry Leschen to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] ANNA A. FASH,
Notary Public.

My commission expires Sept. 27, 1913.

23 Endorsement stamp: Received Union Agency Mar. 3, 1913. Enclosure to Dept. No. 770.

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ———,
County of ———, ss:

Before me, ————, in and for said county and State, on this ——— day of ———, personally appeared ——— to me known to be the identical person— who executed the within and foregoing instrument, and acknowledged to me that ——— executed the same as ——— free and voluntary act and deed for the uses and purposes therein set forth.

———————————.

My commission expires ———.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 17th day of January, 1913.

[SEAL.] THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest:

H. F. SINCLAIR, *Secretary.*

CONSENT OF SURETY.

The ——— of ———, surety for ——— on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made ———.

Dated at ——— this ——— day of ———, 191—.

———.
———.
———.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 24, 1913.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.—H.

24 NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Received Union Agency May 10, 1913. Enclosure No. 26800.
Office of Indian Affairs. Received Jul. 7, 1913. 84133.
Ent. 37017.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard,

guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden, covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an individual one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE. ¼ of SW. ¼ of section 4, township 17 north, range 7 east, subject to the approval of the Secretary of the Interior, to Gypsy Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof the said assignees have hereunto set their hands and seals this seventh day of May, 1913.

KEMP & HAYDEN.
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

STATE OF ———,
——— *County, ss:*

Before me, a ——— in and for said county and State, on this ——— day of ———, 191—, personally appeared ——— to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its ——— and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

——— ———.
——— ———.

My commission expires ———, 191—.

[Endorsement stamp: Received Union Agency Jul. 21, 1913. Enclosure to Dept. No. 2472.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, F. C. Hays, a notary public in and for said county and State, on this seventh day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.] F. C. HAYS,
Notary Public.

My commission expires November 19th, 1915.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 7th day of May, 1913.

[SEAL.] GYPSY OIL COMPANY,
M. M. DOAN, *General Agent.*

Attest: [Illegible], *Assistant Secretary.*

CONSENT OF SURETY.

The ——— of ———, surety for ——— on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

26 Dated at ——— this — day of ————, 191—

DEPARTMENT OF THE INTERIOR.
Washington, D. C., Jul. 14, 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES,
First Assistant Secretary. W. C. P.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:
Received Union Agency May 16, 1913. Enclosure No. 27824.
Office of Indian Affairs. Received Jul. 7, 1913. 84133.
Ent.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and

between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, the assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE. ¼ of SW. ¼ of section 4, township 17 N. range 7 E., subject to the approval of the Secretary of the Interior to Toxaway Oil Company, a corporation of Tulsa, Oklahoma.

27 In witness whereof, the said assignees have hereunto set their hands and seals this 15th day of May, 1913.

KEMP & HAYDEN.
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

STATE OF ------
------ *County, ss:*

Before me, a ---- in and for said county and State, on this ---- day of ------, 191--, personally appeared ------ to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its ------ and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

My commission expires ----------, 191--

[Endorsement stamp: Received Union Agency, Jul. 21, 1913. Enclosure to Dept. No. 2472.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF OKLAHOMA,
County of Tulsa, ss:

Before me, F. C. Hays, a notary public in and for said county and State, on this 15th day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowl-

edged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

[SEAL.] F. C. HAYS,
Notary Public.

My commission expires November 19th, 1915.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

28 In witness whereof, the said assignee has hereunto set its hand and seal this 15th day of May, 1913.

[SEAL.] TOXAWAY OIL COMPANY,
By E. R. KEMP, *President.*

Attest:

R. S. SHERMAN, *Secretary.*

CONSENT OF SURETY.

The ------ of ------, surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at ------ this ------ day of ------, 191--

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES, *First Assistant Secretary.* W. C. P.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:

Ent. 3707.
Received Union Agency Mar. 13, 1914. Enclosure No. 16210.
Office of Indian Affairs. Received Apr. 18, 1914. 42255.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

The southeast quarter (¼) of the southwest quarter (¼) of section 4, township 17 north, range 7 east (and other lands).

29 Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Toxaway Oil Company, a corporation, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the undivided one-half interest in the right, title, and interest of the assignee in and to said lease, as the same applies to the SE. ¼ of SW. ¼ of Sec. 4, Twp. 17 N. range [7 E.], subject to the approval of the Secretary of the Interior, to Sperry Oil & Gas Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof the said lessee has hereunto set its hand and seal, this seventh day of March, 1914.

[SEAL.] TOXAWAY OIL COMPANY,
By E. R. KEMP, *Pres.*

Attest:

MARY M. HOKE, *Secy.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, a notary public in and for said county and State, on this 7th day of March, 1914, personally appeared E. R. Kemp to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] JOHN SCHMITZ.

My commission expires *My commission expires* Jan. 26, 1916.

(Endorsement stamp:) Received May 12, 1914. Union Agency. Dept. No. 2120.

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ------,
County of ------, *ss:*

Before me, ------ in and for said county and State, on this -- day of ------, personally appeared ------ to me known to be the identical person-- who executed the within and foregoing instrument, and acknowledged to me that -- executed the same as ---- free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires ----------

30 ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 11th day of March, 1914.

[SEAL.] SPERRY OIL AND GAS CO.,
By C. F. BISETT, *Vice Pres.*

Attest:

GEO. E. WISK, *Secty.*

CONSENT OF SURETY.

The ------ of ------; surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made. ------

Dated at ------ this -- day of ------, 191--

DEPARTMENT OF THE INTERIOR.
Washington, D. C., May 4, 1914.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and endorsements:
Received Supt. 5 Civic Tribes Feb. 24, 1916. Enclosure to No. 18810.
Office of Indian Affairs. Received May 13, 1916—52026.]
Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas the Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912,
31 entered into by and between The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

N. ½ of SW. ¼ and SW. ¼ of SW. ¼ of Sec. 4, Twp. 17 north, range 7 east.

Now, therefore, for and in consideration of one ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all the right, title, and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Okla Oil Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set ____ hand and seal, this 12th day of February, 1916.

[SEAL.] THE KATHLEEN OIL COMPANY,
By H. F. SINCLAIR, *President.*

Attest:

E. W. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

STATE OF OKLAHOMA,
Tulsa County, ss:

Before me, notary public in and for said county and State, on the 12th day of February, 1916, personally appeared H. F. Sinclair to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its president and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

[SEAL.] PAUL KONZ,
Notary Public.

My commission expires January 21, 1917.

Duplicate. U. S. Fid. & Guar. Co.
[Endorsement stamp: Received Supt. 5 Civ. Tribes, May 27, 1916. Enclosure to Dept. No. 3449.]

ACKNOWLEDGMENT OF INDIVIDUAL.

STATE OF ------,
County of --, *ss:*

Before me, ------ in and for said county and State, on this ------ day of ------, personally appeared ------ to me known to be the identical person-- who executed the within and foregoing
32 instrument, and acknowledged to me that ------ executed the same as ------ free and voluntary act and deed for the uses and purposes therein set forth.

My commission expires ----------

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 21st day of February, 1916.

[SEAL.]

OKLA OIL COMPANY.
By FRANK HASKELL,
Vice President.

Attest:

C. E. HANE, *Secretary.*

CONSENT OF SURETY.

The ------ of ------; surety for ------ on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made ----------

Dated at ------, this ------ day of ------, 191--

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1916.

Approved: Subject to the conditions attached to the lease.

BO SWEENEY,
Assistant Secretary.

NOTE.—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of

the surety company. The consent of the surety company need only be executed on the ORIGINAL COPY of the assignment.

Duplicate.

33 Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

The assignment of this lease insofar as pertains to an undivided one-half interest in the SE./4 of the SW./4 of Sec. 4, T. 17 N., R. 7, by Kemp & Hayden to the Gypsy Oil Co., is APPROVED, with the understanding and provision that no rights, claims, or equities, as against future action by or under authority of Congress respecting oil or gas pipe line companies, shall be predicated upon this approval and subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation or royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. WCP.

[Endorsement stamp: Received Supt. 5 Civ. Tribes, May 27, 1916. Enclosure to Dept. No. 3449.]

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 22, 1916.

The assignment of this lease by the Kathleen Oil Company to the Okla. Oil Company insofar as pertains to the N. ½ SW. ¼ and SW. ¼ SW. ¼, Sec. 4, T. 17, R. 7, is APPROVED, effective only from date of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

BO SWEENEY,
Assistant Secretary.

U. S. Fid. & Guar. Co.

[Endorsement stamps:

Office of Indian Affairs. Received May 13, 1916. 52026.
Received May 12, 1914. Union Agency, Dept. No. 2120.]

Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 4, 1914.

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, as-
34 signees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas

Co., as to SE./4 of SW/4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary.

[Endorsement stamps:

Office of Indian Affairs. Received Apr. 18, 1914. 42255.
Received May 12, 1914. Union Agency. Dept. No. 2120.]

Lease No. 22731.
DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jul. 14, 1913.

The assignment of this lease insofar as pertains to an undivided one-half interest in the SE. ¼ of SW./4 of Sec. 4, T. 17 N., R. 7 E., by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. W. C. P.

Lease No. 22731.
DEPARTMENT OF THE INTERIOR,
Washington, D. C., Feb. 24, 1913.

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW./4 of the SW./4 of Sec. 4, T. 17 N., R. 7 E., is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

35 [Endorsement stamp: Office of Indian Affairs. Received Feb. 21, 1913. 23610.]

118 Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW. ¼ of the SW. ¼ of sec. 4, T. 17 N., R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs. Received Dec. 27, 1912. 132434.
Office of Indian Affairs. Received Feb. 21, 1913. 23610.]

Lease No. 22731.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Nov. 29, 1912.

The assignment of this lease in so far as pertains to SE./4 of SW./4 of sec. 4, Twp. 17 N., R. 7 east by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to wit, on the 14th day of September, A. D. 1916, the court filed its opinion herein, which is in words and figures as follows:

36 *Opinion.*

CAMPBELL, D. J.:

On April 13, 1912, Eastman Richard, as the guardian of Samuel Richard, a minor full-blood member of the Creek Tribe of Indians, executed to the Kathleen Oil Company an oil and gas lease for the term of ten years, and as much longer as oil and gas might be found in paying quantities, covering the southwest quarter of section 4, township 17 north, range 7 east, in Creek County, Oklahoma, being

the allotment of said Samuel Richard as such Creek full blood Indian. This lease was duly approved by the Acting Secretary of the Interior on June 8, 1912, and the lessee or its assigns have since operated the same for oil and gas, and a large amount of royalties have accrued now held by the defendants as they contend in their official capacity. Samuel Richard died January 24, 1916, while still a minor. A portion of the funds so held accruing prior to his death and the remainder since his death. The plaintiffs as administrators of said Samuel Richard, deceased, are prosecuting this suit to recover this fund from the defendants and to restrain them from attempting to collect future royalties, or interfere with plaintiffs in the collection of same.

At the time this lease was executed the restrictions had not been removed from this land (section 1, Act of May 27, 1908, 35 Stat. 312), and hence, as provided in section two of the same act, this oil and gas lease could only be made with the approval of the Secretary of the Interior under rules and regulations provided by him. It was provided in the lease that the prescribed royalty should be paid to the United States Indian superintendent, Union Agency at Muskogee, Oklahoma, which officer is now the defendant Parker, with title as Superintendent for the Five Civilized Tribes. The lease contained the further provisions:

"8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: Provided, however, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease."

"12. In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be re-
37 leased from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease."

At the time of the execution of the lease the following were among the rules and regulations promulgated by the Secretary relating to oil and gas leases:

"20. All royalties, rents, or payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to the United States Indian agent at Union Agency, Muskogee,

Okla., or to such other preson as may be designated by the Secretary of the Interior, for the benefit of the various lessors, or, in cases of minors and incompetents, shall be deposited as hereinafter specified. (See amendment of July 23, 1910, as to minors and incompetents, p. 31.) No royalties on such leases shall be paid by the lessee direct to the lessors or their representatives."

"25. All royalties, rents, or payments accruing under any lease made for or on behalf of any minor or incompetent shall be held by the United States Indian superintendent, Union Agency, or such other disbursing officer as may be designated by the Secretary of the Interior, to the credit of the guardian (or curator) of such minor or incompetent and shall be paid to such guardian (or curator) upon voucher executed by him and approved by the judge of the county (probate) court having jurisdiction of the estate of such minor or incompetent (the form of such voucher to be prescribed by the department), or upon authority of such court in the form of an order satisfactory to said superintendent or other officer in charge of the Union Agency."

The lease in question was approved June 8, 1912, and on November 29, 1912, rule 25 above quoted was amended by adding thereto the following provision:

38 "Provided, however, that the said superintendent or other officer in charge of the Union Agency is authorized in his discretion, where considered for the best interests of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents, or payments accruing under any lease have been paid to said superintendent, to withhold the disbursement of such royalties, rents, or payments, wholly or in part, from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs."

It is conceded that the plaintiff, Eastman Richard, who is the father of Samuel Richard, deceased, is his sole heir and, therefore, inherits the land covered by the lease. Eastman Richard is a duly enrolled member of the Creek Tribe of the full blood. Therefore he can not convey this land he inherited without the approval of the county court having jurisdiction of the settlement of the estate of the deceased, as provided by section 9 of the act of May 27, 1908, supra, reading:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land; provided, that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee."

Hence the land is still subject to governmental restriction upon alienation in the hands of this full-blood heir.

Tiger v. Western Investment Co., 221 U. S. 286; Marcy v. Board of Commissioners (Okla.), 144 Pac. 611; U. S. v. Shock, 187 Fed. l. c. 873.

There can be no question of the power of the Secretary of the Interior to prescribe the foregoing rules and regulations, so far as they relate to departmental control of accruing royalties, during the life of the lessor, Samuel Richard. In United States v. Thurston County, Nebraska, 143 Fed. 287, Judge Sanborn, speaking for the Circuit Court of Appeals, said:

"The act of 1902 authorized these heirs to sell and convey
39 their inherited lands only when the proposed sales were approved by the Secretary of the Interior. It thereby vested in the Secretary plenary power to permit or to forbid the sales proposed. The whole is greater than any of its parts, and includes them all, and the authority to allow or to prohibit proposed sales necessarily included the power to consider and determine the terms and conditions on which such sales should be approved. By rules and regulations approved October 4, 1902, and amended September 16, 1904, and May 25, 1905, the Secretary provided that owners of inherited Indian lands might be permitted to sell them on condition that they agreed that the proceeds of such lands should be placed in one or more banks, which should furnish satisfactory bonds to guaranty the safety of the deposits, to the credit of each heir in proper proportion, subject to the checks of such heirs only when approved by the agent or officer in charge for amounts not exceeding $10 to each in any one month, and subject to their checks for larger amounts only when approved by the agent specifically authorized by the Commissioner of Indian Affairs. The acts of Congress authorized the Secretary to make these regulations for the purpose of carrying into effect the act of 1902, and, when made, they had the force of statutory enactments. Rev. St. Nos. 441, 465 (U. S. Comp. St. 1901, pp. 252, 264); U. S. v. Eaton, 144 U. S. 688, 12 Sup. Ct. 764, 36 L. ed. 591; Wilkins v. U. S., 96 Fed. 837, 37 C. C. A. 588 The Indians whose rights are under consideration made the sales of their lands subject to the conditions prescribed by these rules. * * *

"As the Secretary of the Interior was empowered to permit or forbid the sales of these inherited Indian lands, he had authority to determine upon what conditions he would allow such sales, and to prescribe and enforce the terms specified in his regulations upon this subject."

But it is urged that upon the death of Samuel Richard the jurisdiction of the Secretary to control the royalties arising under this lease ceased. It is pointed out that by virtue of Section 9 of the Act of May 27, 1908, above quoted, had the land not been leased before Samuel Richard's death Eastman Richard, with the approval of the court having jurisdiction of the settlement of Samuel Richard's estate, could have made an oil lease covering the lands providing for

the payment of the royalties direct to him without any supervision on the part of the Secretary of the Interior. But at the time the lease was made, or at any time thereafter during the life time of Samuel Richard, the Secretary had the power to prescribe any
40 conditions as to control of the royalty funds having reasonable relation to the supervisory control and guardianship asserted by the Government. What the policy of the Government then was, and still is, with regard to such control and guardianship over full blood Indians and their full blood heirs, pertaining to allotted and inherited lands, is expressed in the act of Congress of May 27, 1908, supra. Measured by that act I conclude that the Secretary acted within his province and power when on November 29, 1912, he promulgated the amendment to section 25 of the applicable rules and regulations whereby the defendants, in their official capacity, were authorized in their discretion where considered for the best interest of the minor Samuel Richard, or his full blood heir Eastman Richard for whose account the royalties in controversy have been paid to the defendants, to withhold the disbursement thereof, wholly or in part, until such time or times as the payment thereof is considered best for the benefit of said Eastman Richard the full blood heir. If that be true this action must faail. It is not a question here as to whether the defendants in their official capacity are wisely exercising the discretion reposed in them. It follows that decree must enter for defendants at plaintiffs' cost.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sep. 14, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, the same being one of the days of a special session of the United States District Court for the Eastern District of Oklahoma, held at Muskogee, Oklahoma, court met pursuant to adjournment. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Decree.

On the 12th day of September, 1916, this cause came on for trial by agreement of the parties and on such date the court heard the evidence in this cause and the argument of counsel and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises:

41 It is ordered, adjudged and decreed by the court that the plaintiffs take nothing by this action but that the defendants have and recover from the plaintiffs all costs herein laid out and expended.

For all of which let proper execution issue.

To all of which plaintiffs in open court except and their exceptions are allowed and thereupon the plaintiffs give notice of appeal in open court.

RALPH E. CAMPBELL, *Judge.*

O. K. as to form.

LUCAS & TABOR, *Attys. for Plaintiffs.*

(Endorsed:) Filed Sept. 21, 1916, R. P. Harrison, clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, the complainants filed their petition for allowance of appeal together with their assignment of errors, which appeal was by the court allowed. Said petition for allowance of appeal, assignment of errors and order allowing appeal are in words and figures as follows:

Petition for allowance of appeal.

To the Hon. Ralph E. Campbell, District Judge:

The above named plaintiffs, conceiving themselves aggrieved by the order and decree made and entered in the above named and styled cause, on the 12th day of September, 1916, wherein and whereby it was ordered and decreed by the court that the plaintiffs take nothing by this action, but that the defendants have and recover of and from the plaintiffs all costs herein expanded and laid out, does hereby appeal from said order and decree of the said court, so made on the said 12th day of September, 1916, to the United States Circuit Court of Appeals, for the Eighth Circuit, for the reasons specified in the assignments of error filed herein, and said plaintiffs pray that this appeal may be allowed, and that a transcript of the records, papers and proceedings duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

LUCAS and TABOR,
Attorneys for Plaintiffs.

42 (Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, clerk U. S. District Court, Eastern District Oklahoma.

Assignments of error.

Comes now the plaintiffs in the above entitled and styled cause of action and file the following assignments of error, upon which they and each of them will rely upon their prosecution of the appeal from the decree made by this honorable court on the 12th day of September, 1916, in the above entitled cause.

I.

That the United States District Court erred in rendering judgment in favor of the defendants and against the plaintiffs.

II.

That the said court erred in not rendering judgment in favor of plaintiffs and against said defendants.

III.

That the said trial court erred in holding that the defendants are now entitled to withhold from plaintiffs monies accrued as royalties collected from the allotment of Samuel Richard, deceased, prior to the death of the said Samuel Richard.

VI.

That the trial court erred in holding as a matter of law, that the defendants are now entitled to withhold from the plaintiff the monies collected by them as royalty from the allotment of Samuel Richard, deceased, which accrued and have been collected since the death of said Samuel Richard.

V.

That the trial court erred in holding that the lands constituting the allotment of Samuel Richard, deceased, was and is restricted, after the death of the said allottee.

Wherefore said plaintiffs pray that the judgment of the said court be reversed, and that a judgment be rendered in this cause as prayed for in plaintiff's amended petition filed herein.

LUCAS and TABOR,
Attorneys for Plaintiffs.

43 (Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

Order allowing appeal.

Upon motion of Lucas & Tabor, counsel for plaintiffs, Eastman Richard and R. D. Martin, as coadministrators of the estate of Samuel Richard, deceased, and their petition for an order allowing an appeal, together with assignments of error being filed herein,

It is ordered that an appeal to the United States Circuit Court of Appeals, for the Eighth Circuit, from the final decree heretofore rendered and filed in this cause on the 12th day of September, 1916, be and the same is hereby allowed, and that a certified transcript of the records, papers and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals, for the Eighth Circuit, at St. Louis, Missouri.

It is further ordered that the bond on appeal be fixed in the sum of $500.00, the same to act as a bond for costs and damages on Appeal.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, plaintiffs and defendants, by their solicitors of record, filed stipulation as to record and evidence on appeal, which was approved by the court, said stipulation and approval of the court being in words and figures as follows:

Stipulation as to record and evidence on appeal.

On this the 21st day of September, 1916, there having been duly filed in this cause petition for order allowing appeal and an order allowing appeal having been duly entered by the court, cost bond having been filed and approved and assignment of errors duly filed and notice of appeal having been heretofore duly given in open court, the plaintiffs, by their attorneys, and the defendants, by their attorneys, now, in open court, stipulate and agree and file this stipulation and agreement subject to the approval of the court.

44 It is agreed that, for the purposes of appeal, the record in this cause shall consist of the amended petition of plaintiffs, the answer of defendants, the decree and opinion of the court, and this stipulation, together with petition for appeal, order allowing appeal and assignment of errors, and that plaintiffs may file præcipe for printing of record, in accordance with this agreement, without further notice.

It is agreed that the undisputed evidence in this case disclosed that Samuel Richard was, during his lifetime, a full-blood member of the Creek Tribe of Indians, who received an allotment of land properly described in plaintiffs' petition; that an oil and gas lease was duly and properly executed thereon by the guardian of the said Samuel Richard, who was a minor, and that said oil and gas lease was duly approved by the probate court, as required by the laws of the State of Oklahoma, and was, in the month of June, 1912, approved by the Secretary of the Interior, as required by the laws of the United States; that operations under said lease began and the royalties and rents accruing under the said lease were paid to the defendants, who received the same and have, at all times since, held the same, keeping an account of the receipts under such lease, showing the amounts of money received and credited to the account of Samuel Richard, which money was received by them pursuant to the terms of said lease and which money they claimed to be entitled to hold only by reason of their official character. That defendants make no claim of any personal interest in said sum.

That, on the 24th day of January, 1916, the said Samuel Richard died, and that he left surviving him, as his nearest relatives and members of his immediate family, the following persons:

Eastman Richard, his father, Jeannetta Richard, his sister, and Rina Richard, his sister, all of whom are duly enrolled full-blood members of the Creek Tribe of Indians, and to one or all of whom, as an inheritance from the said Samuel Richard, the said land now belongs.

That Eastman Richard and R. D. Martin are the duly appointed, qualified and acting administrators of the estate of the said Samuel Richard, deceased.

It is further agreed that, at the date of the trial, the defendants had in their possession the sum of $216,154.16, a portion of which money was paid to the defendants as royalties prior to the death of the said Samuel Richard, and the remaining portion as royalties subsequent to the death of the said Samuel Richard.

LUCAS & TABOR,
Attorneys for Plaintiffs.
D. H. LINEBAUGH,
United States Attorney,
PAUL PINSON,
Special Assistant to United States Attorney,
Attorneys for Defendants.

The above stipulation as to the matters to be contained in the record for appeal in this cause and as to the evidence in this cause for the purpose of appeal, is hereby approved this the 21st day of September, 1916.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed Sept. 21, 1916. R. P. Harrison, Clerk U. S. District Court, Eastern District Oklahoma.

And, to wit, on the 21st day of September, A. D. 1916, the plaintiffs filed notice and election as to printed transcript, and acknowledgment of service thereof, which are in words and figures as follows:

Praecipe.

To the Honorable R. P. Harrison, clerk of the above named court:

You are hereby notified that Eastman Richard and R. D. Martin, as co-administrators of the estate of Samuel Richard, deceased, having appealed from the decree rendered against them in the above entitled cause, elect to have a transcript of the record in said cause printed under your official supervision, under the act of Congress of February 13, 1911, and respectfully request that the transcript in said cause be printed as required by law, under your

direction, in accordance with this election, and you are requested to make a transcript in the above entitled cause, to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal allowed in said cause, and to include in said transcript of record the following and no other papers or exhibits:

1. Amended petition.
2. Answer of defendants.
3. Opinion of the court.
4. Decree.
5. Petition for order allowing appeal.
6. Assignment of errors.
7. Order allowing appeal.
8. Stipulation of counsel as to pleading and evidence material for appeal.
9. This præcipe and acceptance thereof.
10. Clerk's certificate.

LUCAS and TABOR,
Attorneys for Plaintiffs.

We, the undersigned, attorneys for the defendants, appellees on appeal herein, do hereby acknowledge receipt of the above designation of parts of the record necessary for the consideration of the errors assigned by the appellants, and waive the designation of any further part, or parts, of the records, hereby agreeing that the above includes all the parts of said record necessary for the consideration of the errors assigned by the appellants, and agree that said record shall be printed under the supervision of the clerk of the United States District Court for the Eastern District of Oklahoma.

Dated this 21st day of September, 1916.

D. H. LINEBAUGH,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Attorneys for Defendants.

(Endorsed:) Filed Sep. 21, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

47 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Eastern District of Oklahoma, ss:

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, v. Gabe E. Parker, and W. M. Baker, and Gabe E. Parker, as Superintendent for

the Five Civilized Tribes, and W. M. Baker, as Cashier for the Five Civilized Tribes, No. 2322 Equity, as was ordered by præcipe of counsel herein to be prepared and authenticated, as the same appears from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 28th day of September, 1916.

[SEAL.]

R. P. HARRISON, *Clerk.*
By L. S. TRIMBLE, *Deputy.*

Filed Sept. 30, 1916. John D. Jordan, Clerk.

48 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

Appearance of counsel for appellants.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4799.

EASTMAN RICHARD and R. D. MARTIN, COADMINISTRATORS, etc., Appellants,
vs.
GABE E. PARKER, ET AL.

The clerk will enter my appearance as counsel for the appellants.

J. B. LUCAS,
Checotah, Okla.
BRITTON H. TABOR,
Checotah, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Oct. 3, 1916.

Appearance of counsel for the appellees.

The clerk will enter my appearance as counsel for the appellees.

PAUL PINSON,
Special Asst. U. S. Atty., Muskogee, Okla.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Jan. 22, 1917.

49 *Order of submission.*

December Term, 1916. Monday, January 22, 1917.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Britton H. Tabor for appellants, con-

tinued by Mr. Paul Pinson for appellees and concluded by Mr. J. B. Lucas for appellants.

Thereupon, this cause was submitted to the court on the transcript of the record from said district court and the briefs of counsel filed herein.

Opinion.

United States Circuit Court of Appeals, Eighth Circuit.

No. 4799.—May Term, A. D. 1917.

EASTMAN RICHARD, et al., ADMINISTRATORS, appellants, *vs.* GABE E. PARKER, et al., APPELLEES.	Appeal from the District Court of the United States for the Eastern District of Oklahoma.

Mr. Britton H. Tabor and Mr. J. B. Lucas for appellants.

Mr. Paul Pinson, Special Assistant to United States Attorney (Mr. D. H. Linebaugh, United States Attorney, and Mr. W. P. McGinnis, Special Assistant to United States Attorney, were with him on the brief), for appellees.

Before Carland and Stone, circuit judges, and Munger, district judge.

Munger, district judge, delivered the opinion of the court.

Samuel Richard, a minor, was a full-blood citizen of the Creek Nation of the Five Civilized Tribes of Indians, residing in Oklahoma. He held an allotment of 160 acres of land. On April 13, 1912, acting through his guardian, he executed an oil and gas lease of this land to the Kathleen Oil Company. The lease was approved by the probate court and by the Secretary of the Interior. On January 24, 1916, and while yet a minor, Samuel Richard died, and thereafter appellants were appointed as his administrators. The sole heir of Samuel Richard is his father, Eastman Richard, who is one of the administrators.

The lease provides for a payment to the United States Indian superintendent, for the use of the lessor, of a royalty on the proceeds of oil and gas obtained from the land. The lessee and its assigns
51 have extracted large quantities of oil from the land, both before and after the death of the lessor, and have paid the superintendent, as royalties, the sum of $216,145.16. The greater portion of this amount was paid during the lifetime of the lessor. This suit was brought by the administrators of Samuel Richard against the superintendent and cashier of the Five Civilized Tribes to recover this money and to restrain them from collecting royalties further under the lease.

Under the original Creek treaty (act of Mar. 1, 1901, 31 Stats. 861) and the supplemental Creek treaty (act of Jun. 30, 1902, 32 Stats. 500) the alienation of allotted lands was forbidden for a fixed period, without the approval of the Secretary of the Interior. By subsequent acts of Congress (act of Apr. 21, 1904, 33 Stats. 189; act of Apr. 26, 1906, 34 Stats. 137; act of May 27, 1908, 35 Stats. 312) certain classes of beneficiaries were released from the restrictions upon alienation, but the land of Samuel Richard, as a minor, was subject to restrictions upon alienation during his lifetime. At the time of the execution of the lease to the Kathleen Oil Company, section two of the last mentioned act of Congress contained this provision:

"That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: Provided, That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years, may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise."

In the lease appeared this condition:

"In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian
52 superintendent shall thereafter be made to lessor or the then owner of said lands in person or be depoosited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease."

The lease recited that it was subject to the regulations of the Secretary of the Interior then or thereafter in force. The regulations promulgated by the Secretary provided for the payment to the United States Indian agent of all royalties accruing under any lease made on behalf of a minor and for the retention of these funds by the superintendent, or other designated disbursing officer, to the credit of the guardian of the minor. The superintendent was authorized by these regulations to withhold the disbursement of this money until it was considered for the interest of the minor or his heirs that it should be paid. The question presented for decision is whether the restrictions in the lease and in these regulations are

still in force, or were they abrogated by that portion of section nine of the act of May 27, 1908, which reads as follows:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee:"

In the acts which have been cited, Congress has manifested its intention gradually to release governmental control over the lands of those members of the Five Civilized Tribes who were deemed capable of the management of their own property. The act of May 27, 1908, very greatly enlarged the classes of thoes who were left free to deal with their allotments. In the committee reports to each house of Congress, accompanying the bill, it was stated that one object of the bill was to release about eight million acres, or one-half, of the restricted allotments from further supervision by the United States, over its alienation. Among other provisions for such release is that found in section nine of the act, which has been quoted above. The language of this section seems clear and definite.

4 "The death of an allottee removes all restrictions over the alienation of his land, other than a homestead, except that no conveyance of any interest in the land by a full-blood Indian heir is valid unless approved by the proper probate court. No exception was made because of existing leases of the land, unless a lease had been executed but had not been approved by the Secretary of the Interior; in that case the lease was subject to the approval of the secretary (section three). Congress knew that many leases of Indian lands were outstanding, for it had authorized their execution by previous acts, and by section three of this act it permitted allottees of land from which restrictions were removed to cancel the leases upon agreement with the lessees. The omission to reserve any other supervision than that by the probate court over conveyances by full-blood heirs of allottees is rendered more significant by the fact that in the next proviso in section nine the right of supervision by the Secretary of the Interior over another class is expressly retained. Notwithstanding the fact that Congress left but one restriction upon the alienation of this land, the control of the probate court, appellees claim that other restrictions exist to the extent that the Secretary of the Interior may collect the royalties under the lease made by the deceased allottee and may retain from his administrators the royalties collected before and since his death. In support of this claim appellees say that the Secretary of the Interior had the authority at the time this lease was made to make regulations as to the approval of the leases executed by minor allottees which had the force and effect of law; that these regulations provided for the impounding of the royalties and for the payment to the lessor, or his heirs, at the discretion of the Secretary as to time and amount; that the lease by Samuel Richard provided that it should be released

from the grasp of these regulations only when all restrictions should be removed; and that as one restriction still exists, because the consent of the probate court must be obtained to validate a conveyance by the heir, all restrictions have not been removed, and, therefore, the terms of the lease and of the regulations of the Secretary remain in force as to control of the royalties. The answer to this contention is that the powers of the Secretary of the Interior over this land are only derivative. These supervisory powers, as expressed either in the regulations of his department or in the lease cannot survive the grant under which they were made, and when Congress declared that all restrictions upon alienation, except one, were removed, none of the powers reserved in the regulations and lease longer remained operative. By the enactment of this statute the right was conferred upon the heirs of the allottee to make a conveyance of the allotment upon the one condition of its approval by the proper probate court, and the approval of the Secretary of the Interior was unnecessary. United States v. Knight, 206 Fed. 145; Harris v. Gale, 188 Fed. 712; Ma Harry v. Eastman, 29 Okla. 46, 116 Pac. 935; Nicholas v. Cornelius, 152 Pac. 831; Hope v. Foley, 157 Pac. 727.

The removal of all restrictions upon alienation included the release of control over the collection of royalties under the lease, after the death of the allottee, as the "royalties to accrue were a part of the estate remaining in the lessor." United States v. Noble, 237 U. S. 74–80.

While the royalties that had been collected and withheld by the Secretary of the Interior prior to the death of the lessor, were personal property, United States v. Noble, supra, the control of these funds was an incident of the power to approve of the lease, and when Congress declared its purpose to allow the heirs of allottees to alienate the land free from all restrictions, we think it was the intention of Congress to dispense with further supervision by the Secretary of the Interior over the funds that had been collected under that power. In other words, Congress did not intend, in allowing the heirs of allottees to alienate their land free from all restrictions, subject only to the approval of the proper probate court, to leave the heir in the same position as the intestate was before his death. The legislation meant something. Neither did Congress intend to postpone the enjoyment of the estate by the heir until after he had sold it with the approval of the probate court, which would be the only way he could remove the only restriction left. For these reasons the decree of the lower court is reversed, and the cause is remanded with directions to enter a decree for complainants in accordance with this opinion.

Stone, circuit judge, dissents.

Filed August 21. 1917.

55 *Decree.*

United States Circuit Court of Appeals, Eighth Circuit.

September Term, 1917. Monday, September 3, 1917.

EASTMAN RICHARD and R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, Appellants,
vs.
GABE E. PARKER and GABE E. PARKER, AS SUPERINTENDENT for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes. } No. 4799.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

This cause came on to be heard on the transcript of the record from the district court of the United States for the Eastern District of Oklahoma, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this court, that the decree of the said district court, in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree for complainants in accordance with the opinion of this court.

September 3, 1917.

56 *Petition for appeal and assignment of errors on appeal to Supreme Court, U. S.*

Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellees, as above named, but appellants herein, by their solicitors of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Paul Pinson, special assistant to the United States attorney for the Eastern District of Oklahoma, conceiving themselves aggrieved by the decision and decree of the United States Circuit Court of Appeals made in the above entitled cause on the 3rd day of September, 1917, do hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, filed herewith, and pray that this appeal may be allowed and that a transcript of the records and proceedings in said cause, with all things concerning the same duly authenticated, may be sent to the Supreme Court of the United States.

W. P. MCGINNIS,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Assignment of errors.

Now come Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, by their solicitors of record, W. P. McGinnis, United States attorney for the East-
57 ern District of Oklahoma, and Paul Pinson, special assistant to the United States attorney for the Eastern District of Oklahoma, and say, that in the record and proceedings in this cause there is manifest error and that the United States Court of Appeals for the Eighth Circuit erred in this, to wit:

First. The court erred in reversing the judgment and decree of the district court of the United States for the Eastern District of Oklahoma, made and entered on the 21st day of September, 1916, and remanding said case to the said United States District Court for the said Eastern District of Oklahoma with directions to enter a decree for the appellees herein.

Second. The court erred in not sustaining the decree of the United States District Court for the Eastern District of Oklahoma, made and entered for the appellants herein on the 21st day of September, 1916.

Third. The court erred in holding and deciding and decreeing that the appellees herein, Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, should recover from the appellants the moneys sued for or any portion thereof.

Fourth. The court erred in holding that after the title to the land and moneys in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued prior to the death of said Samuel Richard under the terms of the oil and gas mining lease covering his restricted allotment.

Fifth. The court erred in holding that after the title to the land and moneys in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only
58 heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued since the death of said Samuel Richard under the terms of the oil and gas mining lease covering his restricted allotment.

Sixth. The court erred in holding that after the title to the land in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian, and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to supervise the operations carried on under the terms of the oil and gas mining lease covering the restricted allotment of said Samuel Richard, deceased.

Wherefore the appellants pray that such judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed, and that the Supreme Court of the United States of America render such proper decree as shall conform to the facts disclosed by the record and the law applicable thereto.

W. P. McGINNIS,
United States Attorney.
PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Nov. 28, 1917.

59 *Order allowing appeal to Supreme Court, U. S.*

It is hereby ordered that the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit be and is hereby allowed as prayed, and it further appearing that the appeal herein is being prosecuted by the United States of America for and on behalf of certain officials of the Department of the Interior, to wit, the superintendent and cashier, respectively, of the Five Civilized Tribes, and answerable herein only in their official capacity, it is further ordered that the said appeal be without bond.

KIMBROUGH STONE,
U. S. Circuit Judge, Eighth Circuit.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Dec. 1, 1917.

60 *Citation.*

UNITED STATES OF AMERICA, *ss:*

To Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit, from a judgment rendered in a cause wherein Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes are appellants and you are appellees, to show cause, if any there be, why the decree reversing the judgment of the United States District Court for the Eastern District of Oklahoma in the above entitled cause, as in said appeal mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Kimbrough Stone, U. S. Circuit Judge in and for the Eighth Circuit, this 30th day of November, A. D. 1917.

KIMBROUGH STONE,
United States Circuit Judge, Eighth Circuit.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. September Term, 1917. No. 4799. Eastman Richard et al., appellants, vs. Gabe E. Parker et al. Citation on Appeal to Supreme Court, U. S. Filed Dec. 4, 1917. E. E. Koch, Clerk.

61 *Acceptance of service of citation in appeal.*

In the United States Circuit Court of Appeals for the Eighth Circuit.

EASTMAN RICHARD AND R. D. MARTIN, COADMINISTRATORS of the estate of Samuel Richard, deceased, appellants,
vs.
GABE E. PARKER, GABE E. PARKER AS SUPERINTENENT FOR the Five Civilized Tribes, W. M. Baker and W. M. Baker as cashier for the Five Civilized Tribes, appellees. } No. 4799.

Due and personal service of the citation in appeal in the above-entitled and numbered cause heretofore, on the 30th day of November, A. D. 1917, issued in said cause and signed on that date by the honorable Kimbrough Stone, judge of the United States Circuit Court of Appeals for the Eighth Circuit, and notifying Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, the appellants in said cause, that an appeal has been allowed therein, and that they must appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date thereof, then and there to show cause, if any there be, why the judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit reversing the judgment of the United States District Court for the Eastern District of Oklahoma in said cause should not be corrected and why speedy justice should not be done to the parties in that behalf is hereby acknowledged this 3rd day of December, 1917, on
61½ behalf of the said Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, appellants as aforesaid, by their solicitors of record.

J. B. LUCAS,
and
BRITTON H. TABOR,
Solicitors for Appellants.

61¾ No. 4799. In the U. S. Circuit Court of Appeals for the Eighth Circuit. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, appellants, vs. Gabe E. Parker, Gabe E. Parker as superintendent for the Five

Civilized Tribes, W. M. Baker and W. M. Baker as cashier for the Five Civilized Tribes, appellees. Acceptance of service of citation in appeal to Supreme Court, U. S. Filed Dec. 4, 1917. E. E. Koch, clerk.

62 *Clerk's certificate.*

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress, approved February 13, 1911, and full, true and complete copies of all the pleadings, record entries and proceedings, including the opinion, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Eastman Richard, et al., etc., were appellants, and Gabe E. Parker, et al., etc., were appellees, No. 4799, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation and original acceptance of service of said citation are hereto attached and herewith returned.

I do further certify that on the fifth day of November, A. D. 1917, a mandate was issued out of said Circuit Court of Appeals in said cause, directed to the judges of the District Court of the United States for the Eastern District of Oklahoma.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this sixth day of December, A. D. 1917.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed on cover:) File No. 26,253. U. S. Circuit Court Appeals, 8th Circuit. Term No. 786. Gabe E. Parker, Gabe E. Parker, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes, appellants, vs. Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased. Filed December 12th, 1917. File No. 26,253.

○

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

October Term, 1916.

No. 565.

GABE E. PARKER, GABE E. PARKER AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER AND W. M. BAKER AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND S. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

(22649)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

No. 563.

GABE E. PARKER, GABE E. PARKER AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, W. M. BAKER, AND W. M. BAKER AS CASHIER FOR THE FIVE CIVILIZED TRIBES, APPELLANTS,

vs.

EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS OF THE ESTATE OF SAMUEL RICHARD, DECEASED.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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3 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the May term, 1918, of said court, before the Honorable William C. Hook and the Honorable Kimbrough Stone, Circuit Judges, and the Honorable Martin J. Wade, District Judge.

Attest:

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it remembered that heretofore, to wit, on the fifth day of April, A. D. 1918, a transcript of record, pursuant to an appeal allowed by the District Court of the United States for the Eastern District of Oklahoma, was filed in the office of the clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Gabe E. Parker et al., were appellants, and Eastman Richard et al., were appellees, which said transcript as prepared, printed and certified by the Clerk of said District Court in pursuance of an Act of Congress approved February 13, 1911, is in the words and figures following, to wit:

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF OKLAHOMA.

PLEAS AND PROCEEDINGS BEFORE THE HONORABLE RALPH E. CAMPBELL, JUDGE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF OKLAHOMA, PRESIDING IN THE FOLLOWING ENTITLED CAUSE:

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, *Plaintiffs,*

Equity *vs.* **No. 2322**

GABE E. PARKER, and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER, and W. M. BAKER as Cashier for the Five Civilized Tribes, *Defendants.*

GABE E. PARKER, and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER, and W. M. BAKER as Cashier for the Five Civilized Tribes, *Appellants,*

vs.

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, *Appellees.*

Be It Remembered, That this suit was begun in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon Petition and Bond for Removal; the Transcript having been filed in the office of the Clerk of the United States District Court for the Eastern District of Oklahoma on the 18th day of August, 1916, and was given Equity No. 2322.

The original amended petition being in words and figures as follows:

In the District Court in and for Muskogee County, State of Oklahoma, Before Hon. R. P. deGraffenreid, District Judge. Eastman Richard and R. D. Martin, Co-Administrators of the Estate of Samuel Richard, Deceased, Plaintiffs, v. *Gabe E. Parker and Gabe E. Parker as Superintendent for the Five Civilized Tribes; W. M. Baker, and W. M. Baker as Cashier for the Five Civilized Tribes, Defendants.—No. 4971.*

First Amended Petition.

Comes now the plaintiffs herein, Eastman Richard and R. D. Martin, as Co-administrators of the Estate of Samuel Richard, deceased, and for their First Amended Petition, in the above numbered and styled cause (which is filed by and with the consent of the court, and the said defendants, Gabe E. Parker and W. M. Baker), and for causes of action, alleges and states:

1.

That plaintiffs each and both of them, are residents of McIntosh County, Oklahoma; that the defendants are residents of Muskogee County, Oklahoma, and that this court has jurisdiction of this action.

2.

That these plaintiffs, Eastman Richard and R. D. Martin, were by the County Court, McIntosh County, Oklahoma, on, to-wit: Feb. 29, 1916, duly and legally appointed Co-administrators of the estate of Samuel Richard, Deceased, and that on the 29th day of February, 1916, these plaintiffs, as principal, together with the Southern Surety Company, as surety, made, executed and delivered their joint and several Administrator's Bond, according to law, in said cause, in the penal sum of $225,000.00, which said bond was accepted and approved by the County Court, a copy of which said bond is hereto attached, marked Exhibit "A" and made a part hereof. That on the 29th day of February, 1916, Letters of Administration were duly and legally issued by the said County Court of McIntosh County, Oklahoma, as aforesaid, to these petitioners, as Co-Administrators of said estate of Samuel Richard, Deceased, a copy of which said letters of Administration is hereto attached, marked Exhibit "B" and made a part hereof. That these plaintiffs are the legally appointed, qualified and acting Co-Administrators of the Estate of Samuel Richard, Deceased, and as such Co-Administrators these plaintiffs are entitled to collect and receive any and all monies or other personal properties belonging to said estate.

III.

These plaintiffs further allege and state that the said defendants, Gabe E. Parker, was and is, and has been at all times herein mentioned the legally appointed, qualified and acting Superintendent for the Five Civilized Tribes, and that the said defendant, W. M. Baker, was and is and has been at all times herein mentioned, the legally appointed, qualified and acting Cashier for the Five Civilized Tribes, and that said defendants have collected and received, and have at all times herein mentioned, and now have in their possession, custody and control, the sum of One Hundred Seventy-five Thousand, *Eighteen* Hundred and Eighteen Dollars and sixty-seven cents ($175,-818.67) in money belonging to the Estate of Samuel Richard, Deceased. That these plaintiffs are entitled to the possession of all of said monies belonging to the Estate of Samuel Richard, Deceased, as aforesaid, and that the said defendants, each and both of them, as aforesaid, have unlawfully, and do now unlawfully retain in their possession, custody, and control the aforesaid sums of money.

IV.

Plaintiffs further allege and state that their said estate, the said Samuel Richard, was during his lifetime, a full-blood citizen of the Creek Nation, and enrolled upon the Approved Rolls of the Dawes Commission, opposite No. 7668, and that there was duly allotted and patented to the said Samuel Richard, as said allottee of the Creek Tribe of Indians, an allotment of land consisting of 160 acres of land, described as the

> Southwest Quarter (SW4) of Section 4, Township 17 North, Range 7 East, of the Indian Base and Meridian, according to the U. S. Survey thereof, within the State of Oklahoma,

and that these plaintiffs' intestate, the said Samuel Richard, being the owner in fee simple title to the above described 160 acres of land, and being then a minor under the age of 21 years, did, on to-wit: April 13, 1912, by his then legal guardian, Eastman Richard, make, execute and deliver a certain oil and gas mining lease upon the above described lands, to the Kathleen Oil Company, a corporation, as lessee, and that the said lease was duly approved by the proper officials then having jurisdiction thereof, by reason of the said minority of the said Samuel Richard. That under the terms of the said lease, it was and is provided that the lessee agrees to pay or cause to be paid, to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, or his successor, as trustee, for the use and benefit of said lessor, as royalty, the sums of money represent-

ing 12½% of the gross proceeds of the sale of all crude oil extracted from said lands. The original of which said lease is in the possession of said defendants who are hereby notified to produce same at the trial of this cause, or secondary evidence will be introduced as to its contents.

V.

Plaintiffs further allege and state that under the terms of said lease, it was and is provided that in the event the restrictions on alienation shall be removed from the leasehold premises described above said lease shall be removed from the supervision of the Secretary of the Interior, such release to take effect without further agreement from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior, as therein provided, shall cease, and all payments required to be paid to the United States Indian Superintendent, shall thereafter be made to the said lessor, or the then owner of said lands.

VI.

These plaintiffs further allege and state that they have been informed and believe, and therefore charge, that the said defendants, have collected, and have at all times herein mentioned, and have now in their possession, custody and control the sum of $175,818.67, in money belonging to the estate of said Samuel Richard, deceased. That said defendants as Trustees of plaintiffs' intestate and Estate, collected same from the lessees under said lease as royalty due said Estate by reason of the sale of oil as provided for in said lease, and that the dates and various amounts so collected by said defendants is within the personal and peculiar knowledge of said defendants.

VII.

These plaintiffs further allege and state that said Samuel Richard died on January 24, 1916, and thereafter, on to-wit: March 1, 1916, plaintiff by and with the consent of the lessee and owner of said lease, revoked, renounced, cancelled and terminated the appointment of the said defendants as Trustees under said lease to collect the royalties accruing thereunder and terminated said Trusteeship and notified the defendants thereof, and requested that the said defendants pay to these plaintiffs monies then held by them as Trustees of plaintiffs' estate, but that the said defendants did then, and now refuse to surrender possession of the monies collected by them as Trustees of plaintiffs' estate, and refuse to pay same to these plaintiffs. That these plaintiffs are entitled to possession of all monies belonging to estate of Samuel Richard, deceased, which

are being held by said defendants, each and both of them as aforesaid. That said sums of money held by said defendants have by them been and are now illegally held and retained in their possession, custody and control.

VIII.

These plaintiffs further allege and state (in addition to the revocation and termination made by them of the Trusteeship, as hereinabove stated): That by reason of the death of the said Samuel Richard, as aforesaid, on the 24th day of January, 1916, that all restrictions upon the alienation of the lands covered by said lease, were then by operation of law removed beyond under the Acts of Congress, relating and pertaining thereto, and that by reason of the death of said Samuel Richard, that the said monies held by said defendants, and the proceeds accruing from said lease, did then and there (if they were at that time restricted) immediately became unrestricted, and that the said defendants had and have no further jurisdiction or lawful right to hold possession of said sums of money, or any part thereof, and that the said defendants since the death of the said Samuel Richards, as aforesaid, have illegally, unlawfully and without authority of law, held and retained all of the aforesaid sums of money.

IX.

Plaintiffs further allege and state that they have been informed and believe and therefore charge that since the death of the said Samuel Richard on Jan. 24, 1916, as aforesaid, that the said defendants have collected the sum of approximately $50,000.00, the exact amount of which is unknown to plaintiffs, but is within the personal and peculiar knowledge of said defendants, and that unless restrained by proper Order of this court, will continue to collect further sums of money belonging to said estate, the amounts of which are unknown to these plaintiffs, but which is within the personal and peculiar knowledge of defendants, and that the said money so collected by them since the death of the said Samuel Richard, as aforesaid, was illegally collected, and is held by them illegally and without lawful authority. That said defendants should be required to render an accounting to this court (in addition to the above stated sum of $175,818.67) of all monies received and collected by them since Jan. 24, 1916, as aforesaid, as well as an accounting of all monies that may be collected by them until the termination of this suit.

X.

Plaintiffs further allege and state that on March 1, 1916,

and on several occasions thereafter, and prior to the institution of this action, they made both oral and written demands of said defendants for the aforesaid sums of money, and for all monies which they have in their possession, custody or control belonging to the estate of said Samuel Richard, deceased. That said defendants have refused and wholly declined to deliver to these plaintiffs said sums of money, or any part thereof. That these plaintiffs have been entitled to the possession of the same ever since March 1, 1916, as aforesaid, and that they are now entitled to the possession thereof.

Wherefore plaintiffs pray:

(a) That the said defendants, and each and both of them be required to render into this court an accounting of all monies or personal property belonging to the estate of the said Samuel Richard, deceased, which they have in their possession, custody or control.

(b) That the said plaintiffs be decreed a judgment against said defendants, and each and both of them in the sum of $175,818.67, in money, as well as for any and all other monies or personal properties which the court may find that they have in their possession, custody or control, together with interest at the rate of 6% per annum, from March 1, 1916.

(c) That said defendants be restrained from collecting any monies due plaintiffs.

(d) That the plaintiffs do have and recover all costs therein accrued.

(e) That the plaintiffs have all general, special and equitable relief to which they may be justly entitled.

EASTMAN RICHARD and
R. D. MARTIN,
Co-Administrators of Estate of Samuel Richard, Deceased.

By LUCAS & TABOR, *Attys. for Plaintiffs.*

ADMINISTRATOR'S OR EXECUTOR'S BOND.

State of Oklahoma, McIntosh County—ss. *In the Matter of the Estate of Samuel Richard, Deceased.*

Know All Men by These Presents: That we, R. D. Martin, Checotah, Oklahoma, and Eastman Richard, Pierce, Oklahoma, as principals, and Southern Surety Company of Denison, *Oklahoma*, as surety, are held and *firm* firmly bound unto the

State of Oklahoma, in the penal sum of Two Hundred Twenty-five Thousand, and no/100 ($225,000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators and assigns, jointly and severally, by these presents.

The conditions of the above obligation is such, that Whereas, By order of the County Court of McIntosh County, State of Oklahoma made and entered on the 29th day of February, A. D. 1916, the above named principals was appointed Co-Administrators of the Estate of Samuel Richard, deceased, and letters Testamentary were directed to issue to said principal upon their taking and subscribing the oath required by law, and executing a bond to the State of Oklahoma, in the penal sum of Two Hundred Twenty-five Thousand and no/100—— ($225,000.00) Dollars, with two or more sureties to be approved by the Judge of said Court.

Now, if the above bounden principals shall faithfully execute the duties of such trust as such Co-Administrators according to law, then this obligation to be void, otherwise to remain in full force and effect.

In Witness Whereof, We have hereunto subscribed our names, this 29th day of February, A. D. 1916,

R. D. MARTIN,
EASTMAN RICHARD,
Southern Surety Company, (Seal)
By W. F. MOFFAT,
Attorney-in-fact.

I hereby approve the above bond this 29th day of Feb. 1916.
JOHN W. ROBERTSON, *County Judge.*

Endorsed on back as follows: "No. 247—Estate Samuel Richard, Decd. Filed Feb. 29, 1916, W. B. Young, Court Clerk. (Ex. "A")

LETTERS OF ADMINISTRATION.

State of Oklahoma, McIntosh County—ss. *In County Court, Sitting at Checotah, Okla. In the Matter of the Estate of Samuel Richard, Deceased.*

Eastman Richard and R. D. Martin, are hereby appointed administrators of the estate of Samuel Richard, Deceased.

Witness, John W. Robertson, Judge of the County Court of McIntosh County, State of Oklahoma, with the seal thereof affixed this 29th day of February, A. D. 1916.

(Seal) JOHN W. ROBERTSON, *County Judge.*

State of Oklahoma, McIntosh County.

I, Eastman Richard and R. D. Martin, do solemnly swear that I will discharge all and singular the duties of administrator of the estate of Samuel Richard, deceased, according to law, and to the best of my ability. So help me God.

EASTMAN RICHARD,

(Seal) R. D. MARTIN,

Subscribed and sworn to before me this 29th day of February, 1916. JOHN W. ROBERTSON, *County Judge.*

(Ex. "B")

Endorsed: No. 4971. In the District Court in Muskogee County. Eastman Richard and R. D. Martin, administrators of Estate of Samuel Richard, decd., Plaintiffs vs. Gabe E. Parker, Gabe E. Parker, Supt. for Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for Five Civilized Tribes, Defts. First Amended Petition. District Court, State of Oklahoma, County of Muskogee, Filed Jul. 29, 1916, C. H. Shaffer, Court Clerk.

Endorsed: Filed Aug. 18, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 30th day of August, A. D. 1916, the defendants filed their Answer herein, which is in words and figures as follows:

In the District Court of the United States for the Eastern District of Oklahoma.—Eastman Richard and R. D. Martin, Co-Administrators of the Estate of Samuel Richard, Deceased, Plaintiffs, v. *Gabe E. Parker, Gabe E. Parker, Superintendent for the Five Civilized Tribes, W. M. Baker and W. M. Baker, Cashier for the Five Civilized Tribes, Defendants.*—No. 2322 Equity.

Answer.

The defendants and each of them, answering the first amended petition herein filed, allege:

I.

That the defendant, Gabe E. Parker, is an officer of the Interior Department of the United States and is designated as Superintendent for the Five Civilized Tribes and that as such officer he is charged and entrusted with the duty of generally supervising the affairs of all Indians and particularly the restricted Indians, so-called, of the Five Civilized Tribes, among whom is the Creek tribe of Indians.

That the defendant, W. M. Baker, is an officer of the United States and of the Interior Department thereof, designated as Cashier for the Five Civilized Tribes and his duties as such Cashier are to receive and disburse according to law all sums of money properly entering into his possession and control as portions of the funds of the Five Civilized Tribes and the individual members thereof.

II.

That as to whether Eastman Richard and R. D. Martin are the duly and legally appointed administrators of the estate of Samuel Richard, deceased, defendants are not advised; nor are defendants advised as to whether Samuel Richard is now deceased and of these facts defendants demand strict proof. But your defendants allege that Samuel Richard was enrolled as a member of the Creek Tribe of Indians of the full blood, opposite number 7668 upon the approved rolls of said tribe and that there was allotted to him as his share of the tribal lands the Southwest Quarter of Section Four (4), Township Seventeen (17) North, Range Seven (7) East of the Indian Base and Meridian, which said lands were on the 13th day of April, 1912, by virtue of certain congressional laws designed to protect the said Samuel Richard, incapable of alienation for a period of approximately nineteen years from said date unless the Secretary of the Interior should sooner cause the restrictions to be removed therefrom. That on said date the allottee thereof, Samuel Richard, was incapable of leasing the said lands for oil, gas or other mineral purposes save with the approval of the Secretary of the Interior and under such rules and regulations as the said Secretary of the Interior might provide, and that on to-wit, the said 13th day of April, 1912, the said Samuel Richard, who was then a minor under the age of twenty-one years, did execute by his guardian, Eastman Richard, a certain oil and gas mining lease upon the above described lands, which said lease was duly approved by the County Court having jurisdiction of the estate of the said minor, and which said leases was on a form prescribed by the rules and regulations of the Secretary of the Interior, and was duly approved by the Secretary of the In-[terior]. A copy of said lease showing the approval of the Secretary of the Interior is hereto attached, made a part hereof and marked "Exhibit A". Under the terms of said lease and pursuant to the operation thereof there has accrued in the hands of the defendants up to and including the date of the filing of this petition, the sum of $216,-152.15, which said sum of money has been received at various times and in varied amounts, a complete account of which would be inconvenient to detail in this petition. But your defendants

offer to produce to this court, or any person authorized thereby, all books and papers pertaining to the account of the said Samuel Richard, and stand ready to account at any and all times to this court or to any person properly designated by this court for all sums accrued or hereafter to accrue in their hands by virtue of mining operations under said leases.

III.

Your defendants further allege that the said Samuel Richard, if he be in fact dead, left as his sole and only heir at law one Eastman Richard, one of the plaintiffs in this cause, who is a full-blood Indian of the Creek Tribe and who by the death of the said Samuel Richard, if he be in fact dead, became and now is the sole owner of all the property, both real and personal, of which the said Samuel Richard died seized and possessed; and that said property descended to said Eastman Richard free and discharged of all debts accruing during the lifetime of the said Samuel Richard and said property is not subject to administration in any manner or form whatever. And defendants say that the proceeds of the said oil and gas mining leases are, by virtue of the rules and regulations of the Secretary of the Interior, pertaining to the funds so received and by virute of the laws of the United States of America provided for the protection of the said Samuel Richard and all his full-blood heirs, restricted trust funds subject to the control of the Secretary of the Interior as the officer of the United States charged with the duty of enforcing the protection of the United States as a sovereign over its wards, the dependent Indian Tribes and the individual members thereof and particularly over the said Samuel Richard and his full-blood alleged heir, Eastman Richard, one of the plaintiffs herein.

IV.

Your defendants allege that the said allotment of Samuel Richard hereinabove described has at all times since the death of the said Samuel Richard, if he be in fact dead, been the property of the said Eastman Richard and is still owned and controlled by him.

V.

Your defendants and each of them deny that said death of the said Samuel Richard, if said death has in fact occurred, on the 24th day of January, 1916, operated to remove all restrictions upon the alienation of the lands covered by the aforesaid lease and allege that said lands continue to be and are restricted and they further deny that they have no jurisdiction or lawful right to withhold possession of said sums of money so as afore-

said accruing from the operation of the said lease and deny that they now illegally hold the said sums of money; but say that they hold the same as a trust fund created under the laws of the United States and the rules and regulations of the Secretary of the Interior pertaining thereto, for the benefit of the said Samuel Richard and his full-blood heirs, and that they have the right to withhold and disburse said sums of money at such times and in such quantities as they shall deem proper to the said Samuel Richard, or, in the event of his death, to his full-blood heirs.

VI.

Defendants allege that they have no personal interest whatsoever in said sums of money and specifically disclaim as individuals any right, title or interest therein, but say that they and each of them do hold said sums by authority of the Acts of Congress by virtue of which said funds were created and the rules and regulations of the Secretary of the Interior provided pursuant thereto respecting leases of this kind and character; that they and each of them have been, are and at all times will be willing and ready to abide by the orders of this court or any other court of competent jurisdiction relative to the disposition of the money aforesaid, but respectfully allege that said sums of money so accruing in their hands are not subject to disposition and control save and except by order of the Secretary of the Interior or his duly authorized subordinates.

Wherefore, defendants pray that plaintiffs take nothing by this action but that they be hence dismissed with their costs and that they have all other and further relief to which they may be in the premises entitled.

GABE E. PARKER,
GABE E. PARKER, as
Superintendent for the Five
Civilized Tribes,

W. M. BAKER,
W. M. BAKER, as
Cashier for the Five Civilized
Tribes,

By D. H. LINEBAUGH,
United States District Attorney, and
W. P. MCGINNIS, and
PAUL PINSON,
Special Assistants to the
United States District Attorney, *Solicitors for Defendants.*

EXHIBIT A.

[Stamps and Endorsements:

Office of Indian Affairs Received Jul 7 1913—84133
Received Union Agency Jun 18 1912 Enclosure to Dept. No. 1963
Office of Indian Affairs Received Dec 27 1912—132434.
Office of Indian Affairs Received May 29 1912 File—— 53962
Received Union Agency Apr 26 1912 Enclosure to No 24865
Received Union Agency Dec 7 1912 Enclosure to Dept. No. 3701
Office Indian Affairs Received Nov 21 1912—117[illegible]0
Received Union Agency Jun 13 1913 Enclosure to Dept. No. 118.
Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472
Received Union Agency Mar 3 1913 Enclosure to Dept. No. 770
Office of Indian Affairs Received Feb 21 1913—23610
Roy. No. 6057.
Equitable Surety Co.
Apr 29 1917 Q.—H.H.
36057 1 Duplicate]

Form A, Series 1908.—Approved April 20, 1908.
Amended February 6, and June 29, 1911.

OIL AND GAS MINING LEASE UPON LAND SELECTED FOR ALLOTMENT

Creek Nation, Oklahoma.

This Indenture of Lease, Made and entered into in quadruplicate on this 13th day of April, A. D. 1912, by and between Eastman Richard, as the legal Guardian of the person and estate of Samuel Richard, a minor of Pierce, Oklahoma, enrolled as a full blood citizen of the Creek Nation, Roll No. 7668, party of the first part, hereinafter designated as lessor, and The Kathleen Oil Company, a Corporation, of Tulsa, Oklahoma, party of the second part, hereinafter designated as lessee, under and in pursuance of the provisions of the Act of Congress approved May 27, 1908 (35 Stat. L., p. 312), *Witnesseth:*

1. The lessor, for and in consideration of one dollar, the receipt whereof is acknowledged, and of the royalties, covenants, stipulations, and conditions hereinafter contained, and hereby agreed to be paid, observed, and performed by the les-

see, does hereby demise, grant, lease, and let unto the lessee, for the term of ten years from the date of the approval hereof by the Secretary of the Interior, and as much longer thereafter as oil or gas is found in paying quantities, all the oil deposits and natural gas in or under the following described tract of land, lying and being within the county of Creek and State of Oklahoma, to-wit: *The* The Southwest Quarter (¼) of section 4, township 17 North, range 7 East of the Indian Meridian, and containing 160 acres, more or less, with the exclusive right to prospect for, extract, pipe, store, and remove oil and natural gas, and to occupy and use so much only of the surface of said land as may reasonably be necessary to carry on the work of prospecting for, extracting, piping, storing, and removing such oil and natural gas, also the right to obtain from wells or other sources on said land by means of pipe lines or otherwise, a sufficient supply of water to carry on said operations, and also the right to use, free of cost, oil and natural gas as fuel so far as necessary to the development and operation of said property.

2. The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the lessor, as royalty, the sum of 12½ per cent of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil. And the lessee shall pay as royalty on each gas producing well three hundred dollars per annum in advance to be calculated from the date of commencement of utilization: *Provided*, however, in the case of gas wells of small volume, when the rock pressure is one hundred pounds or less, the parties hereto may, subject to the approval of the Secretary of the Interior, agree upon a royalty which will become effective as a part of this lease: *Provided*, further, That in cases of gas wells of small volume, or where the wells produce both oil and gas or oil and gas and salt water to such an extent that the gas is unfit for ordinary domestic purposes, or where the gas from any well is desired for temporary use in connection with drilling and pumping operations on adjacent or nearby tracts, the lessee shall have the option of paying royalties upon such gas wells of the same percentage of the gross proceeds from the sale of gas from such wells as is paid under this lease for royalty on oil. The lessor shall have the free use of gas for domestic purposes in his residence on the leased premises, provided there be surplus gas produced on said premises over and above enough to fully operate the same. Failure on the part of the lessee to use a gas producing well, which can not profitably be utilized at the rate herein prescribed, shall not work a forfeiture of this lease so far as the same relates to

mining oil, but if the lessee desires to retain gas producing privileges, the lessee shall pay a rental of one hundred dollars per annum, in advance, calculated from date of discovery of gas, on each gas producing well, gas from which is not marketed or not utilized otherwise than for operations under this lease. Payments of annual gas royalties shall be made within twenty-five days from the date such royalties become due, other royalty payments to be made monthly on or before the 25th day of the month succeeding that for which such payment is to be made, supported by sworn statements.

3. Until a producing well is completed on said premises the lessee shall pay, or cause to be paid, to the Superintendent, Union Agency, Muskogee, Oklahoma, for lessor, as advance annual royalty, from the date of the approval of this lease, fifteen cents per acre per annum, annually, in advance, for the first and second years; thirty cents per acre per annum, annually in advance, for the third and fourth years; seventy-five cents per acre per annum, annually, in advance, for the fifth year; and one dollar per acre per annum, annually, in advance, for each succeeding year of the term of this lease; it being understood and agreed that such sums of money so paid shall be a credit on stipulated royalties, and the lessee hereby agrees that said advance royalty when paid shall not be refunded to the lessee because of any subsequent surrender or cancellation thereof; nor shall the lessee be relieved from its obligation to pay said advance royalty annually when it becomes due, by reason of any subsequent surrender or cancellation of this lease.

4. The lessee shall exercise diligence in sinking wells for oil and natural gas on land covered by this lease and shall drill at least one well thereon within one year from the date of approval of this lease by the Secretary of the Interior, or shall pay to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, for the use and benefit of the lessor, for each whole year the completion of such well is delayed after the date of such approval by the Secretary of the Interior, for not to exceed ten years from the date of such approval, in addition to the other considerations named herein, a rental of one dollar per acre, payable annually; and if the lessee shall fail to drill at least one well within any such yearly period and shall fail to surrender this lease by executing and recording a proper release thereof and otherwise complying with paragraph numbered 7 hereof on or before the end of any such year during which the completion of such well is delayed, such failure shall be taken and held as conclusively evidencing the elec-

tion and covenant of the lessee to pay the rental of one dollar per acre for such year, and thereupon the lessee shall be absolutely obligated to pay such rental. The failure of the lessee to pay such rental before the expiration of fifteen days after it becomes due at the end of any yearly period, during which a well has not been completed as provided herein, shall be a violation of one of the material and substantial terms and conditions of this lease, and be cause for cancellation of such lease under paragraph numbered 9 hereof; but such cancellation shall not in any wise operate to release or relieve the lessee from the covenant and obligation to pay such rental, or any other accrued obligation. The lessee may be required by the Secretary of the Interior, or by such officer as may be designated by him for the purpose, to drill and operate wells to offset wells on adjoining tracts, and within three hundred feet of the dividing line, or in case of gas wells, lessee may have the option, in lieu of drilling offset wells, of paying a sum equal to the royalties which would accrue on each well to be offset if said wells had been drilled and were being operated on the land described herein and in accordance with the terms hereof. It is understood and agreed by the parties hereto that offset wells shall be drilled, or royalty paid in lieu of drilling, within ten days after the lessee is notified to do so, and failure to comply with such requirement shall constitute a violation of one of the substantial terms of this lease.

5. The lessee shall carry on development and operations in a workmanlike manner, commit no waste on the said land and suffer none to be committed upon the portion in his occupancy or use, take good care of the same and promptly surrender and return the premises upon the termination of this lease to lessor or to whomsoever shall be lawfully entitled thereto, unavoidable casualties excepted; shall not remove therefrom any buildings or permanent improvements erected thereon during the said term by the said lease, but said buildings and improvements shall remain a part of said land and become the property of the owner of the land as a part of the consideration for this lease, excepting the tools, derricks, boilers, boiler houses, pipe lines, pumping and drilling outfits, tanks, engines and machinery, and the casing of all dry or exhausted wells which shall remain the property of the lessee, and may be removed at any time prior to sixty days after the termination of the lease by forfeiture or otherwise; and shall not permit any nuisance to be maintained on the premises under lessee's control, nor allow any intoxicating liquors to be sold or given away for any purposes on such premises; shall not use such premises for any other purpose than those authorized in the lease; and before

abandoning any well shall securely plug the same so as effectually to shut off all water from the oil-bearing stratum, or in the manner required by the laws of the State of Oklahoma.

6. The lessee shall keep an accurate account of all oil-mining operations, showing the sales, prices, dates, purchases, and the whole amount of oil mined or removed; and all sums due as royalty shall be a lien on all implements, tools, movable machinery, and all other personal chattels used in operating said property, and upon all of the unsold oil obtained from the land herein leased, as security for payment of said royalty.

7. The lessee may at any time, by paying to the Indian Superintendent all amounts then due as provided herein and the further sum of one dollar, surrender and cancel this lease and be relieved from all further obligations or liability thereunder: *Provided*, if this lease has been recorded lessee shall execute a release and record the same in the proper county recording office: *Provided, further*, in event restrictions are removed from all leased premises, the lessee may surrender all the undeveloped portion thereof, by paying the lessor all amounts then due and the further sum of one dollar, which surrender shall not affect the terms hereof as to each producing well and ten acres of said premises as nearly in square form as possible next contiguous to and surrounding each of said wells, and execute and record a cancellation of premises surrendered.

8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however*, that no regulations made after the approval of this lease, affecting either the length of term of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease.

9. Upon the violation of any of the substantial terms and conditions of this lease the Secretary of the Interior (or lessor, in event restrictions are removed as provided in paragraph 12 hereof) shall have the right, at any time after thirty days' notice to the lessee specifying the terms or conditions violated, to declare this lease null and void, and the lessor shall then be entitled and authorized to take immediate possession of the land.

10. Before this lease shall be in force and effect the lessee shall furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, and such further bond or

bonds as may be required by said Secretary, conditioned for the performance of this lease, which bond shall be deposited and remain on file in the Indian office.

11. Assignment of this lease or any interest therein may be made with the approval of the Secretary of the Interior, it being understood that to secure such approval the proposed assignee need only be qualified to hold such a lease under the rules and regulations, and furnish a bond with responsible surety to the satisfaction of the Secretary of the Interior, conditioned for the faithful performance of the covenants and conditions of this lease.

12. In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease, and all payments required to be made to the United States Indian Superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

13. Each and every clause and covenant in this indenture shall extend to the heirs, executors, administrators, successors, and lawful assigns of the parties hereto.

14. In witness whereof, the said parties have hereunto subscribed their names and affixed their seals on the day and year first above mentioned.

EASTMAN RICHARD, (Seal)
As Guardian of the person and estate of Samuel Richard, a minor.
THE KATHLEEN OIL COMPANY,
By P. J. WHITE, *President.*

Attest: (Seal) H. F. SINCLAIR, *Secy.*

Two witnesses to execution by lessor:
C. L. Thomas, P. O. Muskogee, Okla.;
Britton H. Tabor, P. O. Checotah, Okla.

Two witnesses to execution by lessee:
E. B. Huston, P. O., Independence, Kansas;
Paul Konz, P. O., Independence, Kansas.

State of Oklahoma, County of Muskogee—ss.

. . . . . before me, Minnie M. Ford, a Notary Public, in and for said county and State, on this 13th day of April, 1912, personally appeared Eastman Richard, as Guardian of the person and estate of Samuel Richard, a minor, to me known to be the identical person who executed the within and foregoing lease, and acknowledged to me that he executed the same as his free and voluntary act and deed for the uses and purposes therein set forth, and in the capacity therein stated.

(Seal) Minnie M. Ford,
(My commission expires February 26, 1916.) Notary Public.

Department of the Interior,
United States Indian Service, Union Agency,
Muskogee, Okla., May 23, 1912.

The within lease is forwarded to the Commissioner of Indian Affairs with recommendation that it be approved. See my report of even date.

R. S. CATE,
Acting United States Indian Superintendent.

Department of the Interior,
Office of Indian Affairs,
Washington, D. C., Jun 5 1912

Respectfully submitted to the Secretary of the Interior, with recommendation that it be approved.

F. H. ABBOTT, *Assistant Commissioner.*

Department of the Interior,
Washington, D. C., Jun 8 1912

Approved CAMIE A. THOMPSON,
Assistant Secretary of the Interior.—H.

Filed for record this 26 day of Apr., 1912, at 3 o'clock, P. M. Dana H. Kelsey, Superintendent Union Agency, by R. W. Field. Advance Royalty Received $24.00.

Duplicate. Roy. No. 6057.

[Stamps and Endorsements:

Received Union Agency Jul 20 1912 Enclosure to No. 42387

Office of Indian Affairs Received Nov 21 1912 117220 Ent Creek Roy. No. 7017]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912,

entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SE¼ of SW¼ of Section 4, Twp 17 North, Range 7 East (and other lands)

Now, Therefore, for and in consideration of One ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all its right, title, and interest of the lessee in and to said SE¼ of SW¼ of Section 4, Twp 17 North, Range 7 East lease, subject to the approval of the Secretary of the Interior to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden of Tulsa, Oklahoma.

In witness whereof, the said lessee has hereunto set its hand and seal, this 2nd day of July, 1912.

THE KATHLEEN OIL COMPANY,

(Seal) By P. J. WHITE, *President.*

Attest: H. F. SINCLAIR, *Secretary.*

ACKNOWLEDGEMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, a notary public in and for said county and State, on this 2nd day of July, 1912, personally appeared P. J. White, to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President, and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Arthur Newlin,

(My commission expires Oct 3-1914.)

[Endorsement stamp: Received Union Agency Dec 7 1912 Enclosure to Dept. No. 3701]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of , *County of* —ss.

Before me, ... in and for said county and State, on this . . . . day of . . . . . , personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . executed the same as . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set their hand and seal this 27th day of July, 1912.

Kemp & Hayden
By E. R. KEMP
JNO. F. HAYDEN

CONSENT OF SURETY.

The Equitable Surety Company of St. Louis, Mo., surety for The Kathleen Oil Company on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at Muskogee Oklahoma this .... day of July, 1912.

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., Nov. 29, 1912.
Approved: Subject to the conditions attached to the lease.
LEWIS C. LAYLIN, *Assistant Secretary.*—H.

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the original copy of the assignment.

[Stamps and Endorsements:

Office of Indian Affairs Received Feb 21 1913. 23610.
Received Union Agency Jan 20, 1913. Enclosure No. 3872.
Creek 6057
Ent.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13, 1912, en-

tered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, Guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma:

SW/4 of SW/- of Section 4, Township 17, North, Range 7 East; said lease having been assigned to the Tartar Oil Company by due and proper departmental assignment.

Now, Therefore, for and in consideration of One Dollar ($1.00) *dollars*, the receipt of which is hereby acknowledged, the said Tartar Oil Company, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys all of its right, title and interest of the assignee in and to said lease, subject to the approval of the Secretary of the Interior to The Kathleen Oil Company of Tulsa, Oklahoma.

In witness whereof, the said assignee has hereunto set its hand and seal, this Fifteenth day of January, 1913.

TARTAR OIL COMPANY,

(Seal) By HENRY LESCHEN, *President.*

Attest: W. E. WEISBERG, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

State of Missouri, City of St. Louis—ss.

Before me, a Notary Public in and for said City and State, on this fifteenth day of January, 1913, personally appeared Henry Leschen to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Anna A. Fash,

(My commission expires Sept. 27, 1913.) Notary Public.

Endorsement Stamp: Received Union Agency Mar. 3 1913 Enclosure to Dept. No. 770.

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . ., *County of* . . . . . .—ss.

Before me, ..., in and for said county and State, on this . . . . . day of . . . . . personally appeared . . . . . to me known to be the identical person. . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 17th day of January, 1913.

THE KATHLEEN OIL COMPANY,

(Seal) By P. J. WHITE, *President.*

Attest: H. F. SINCLAIR, *Secretary.*

CONSENT OF SURETY.

The ....., surety for ..... on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made .....

Dated at ..... this ..... day of ....., 191 ..

.....

.....

.....

Department of the Interior,
Washington, D. C., Feb 24 1913.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN,
Assistant Secretary.—H.

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:

Received Union Agency May 10 1913 Enclosure No. 26800
Office of Indian Affairs Received Jul 7 1913 84133
Ent 37017]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee,

and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of One and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE¼ of SW¼ of Section 4, Township 17 North, Range 7 East subject to the approval of the Secretary of the Interior to Gypsy Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof, the said assignees have hereunto set their hands and seals this Seventh day of May, 1913.

Kemp & Hayden,
By E. R. KEMP,
JNO. F. HAYDEN.

ACKNOWLEDGMENT OF CORPORATION.

State of . . . . . ., ... *County*—ss.

Before me, a . . . . . in and for said county and State, on this . . . . day of . . . . . ., 191 . ., personally appeared . . . . . to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its . . . . . and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . ., 191 . .)

[Endorsement Stamp: Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of Oklahoma, County of Tulsa—ss.

Before me, F. C. Hays, a Notary Public in and for said county and State, on this Seventh day of May, 1913, personally appeared E. R. Kemp and John F. Hayden to me known to be the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the

same as their free and voluntary act and deed for the uses and purposes therein set forth.

(Seal) F. C. Hays,

(My commission expires November 19th, 1915.) Notary Public.

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 7th day of May, 1913.

Gypsy Oil Company,

(Seal) M. M. Doan, *General Agent.*

Attest: [Illegible], *Assistant Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . ., surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . . .

Dated at . . . . . this . . . . . day of . . . . ., 191 .

. . . . . .

. . . . . .

. . . . . .

Department of the Interior,

Washington, D. C., Jul 14 1913

Approved: Subject to the conditions attached to the lease.

A. A. Jones, *First Assistant Secretary. WCI*

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:

Received Union Agency May 16 1913 Enclosure No 27824
Office of Indian Affairs Received Jul 7 1913 84133
Ent]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore

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approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, which lease has been assigned to Kemp & Hayden, co-partners composed of E. R. Kemp and John F. Hayden covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of One and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Kemp & Hayden, the assignees, in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the right, title, and interest of the assignees in and to said lease as to the SE¼ of SW¼ of Section 4, Township 17 N. Range 7 E subject to the approval of the Secretary of the Interior to Toxaway Oil Company, a corporation of Tulsa, Oklahoma.

In witness whereof, the said assignees have hereunto set their hands and seals this 15th day of May, 1913.

Kemp & Hayden,
By E. R. KEMP,
JNO. F. HAYDEN,

ACKNOWLEDGMENT OF CORPORATION.

State of . . . . . , ... *County*—ss.

Before me, a . . . . . in and for said county and State, on this . . . . day of . . . . . , 191 . . , personally appeared . . . . . to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its . . . . . and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth. . . . . .

(My commission expires . . . . . , 191 . .)

[Endorsement stamp: Received Union Agency Jul 21 1913 Enclosure to Dept. No. 2472]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of Oklahoma, County of Tulsa—ss.

Before me, F. C. Hays, a Notary Public in and for said county and State, on this 15th day of May-1913, personally appeared E. R. Kemp and John F. Hayden to me known to be

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the identical persons who executed the within and foregoing instrument, and acknowledged to me that they executed the same as their free and voluntary act and deed for the uses and purposes therein set forth.

F. C. Hays,
Notary Public.

(Seal)

(My commission expires November 19th, 1915.)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 15th day of May, 1913.

TOXAWAY OIL COMPANY,
By E. R. KEMP, *President.*

(Seal)

Attest: R. S. SHERMAN, *Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . , surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made.

Dated at . . . . . this . . . . . day of . . . . . , 19. .

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., Jul 14 1913.

Approved: Subject to the conditions attached to the lease.
A. A. JONES, *First Assistant Secretary.* WCP

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:
Ent. 3707
Received Union Agency Mar 13 1914 Enclosure No. 16210
Office of Indian Affairs Received Apr 18 1914 42255]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor covering the following-described lands in the Creek Nation, Oklahoma:

The Southeast quarter (¼) of the Southwest quarter (¼) of Section 4, Township 17 North, Range 7 East (and other lands)

Now, therefore, for and in consideration of one and 00/100 ($1.00) dollars, the receipt of which is hereby acknowledged, the said Toxaway Oil Company, a corporation, the assignee in the above-described lease, hereby bargains, sells, transfers, assigns, and conveys an undivided one-half interest in the undivided one-half interest in the right, title, and interest of the assignee in and to said lease, as the same applies to the SE¼ of SW¼ of Sec. 4, Twp 17 N. Range [7 E.], subject to the approval of the Secretary of the Interior to Sperry Oil & Gas Company, a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set its hand and seal, this Seventh day of March, 1914.

TOXAWAY OIL COMPANY,

(Seal) By E. R. KEMP, *Pres.*

Attest: MARY M. HOKE, *Sec'y.*

ACKNOWLEDGMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, a Notary Public in and for said county and State, on this 7th day of March, 1914, personally appeared E. R. Kemp to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) John Schmitz.

(My commission expires—My Commission expires Jan. 26, 1916.)

[Endorsement stamp: Received May 12 1914 Union Agency. Dept, No. 2120.]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . ., County of . . . . . —ss.

Before me, ... in and for said county and State, on this . . . . day of . . . . . ., personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . . .)

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 11th day of March, 1914.

SPERRY OIL AND GAS CO.,

(Seal) By C. F. BISETT, *Vice Pres.*

Attest: GEO. E. WISK, *Secty.*

CONSENT OF SURETY.

The . . . . . of . . . . . .; surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . .

Dated at . . . . . this . . . . day of . . . . ., 191 . . .

. . . . . .

. . . . . .

. . . . . .

Department of the Interior,

Washington, D. C., May 4, 1914.

Approved: Subject to the conditions attached to the lease.

LEWIS C. LAYLIN, *Assistant Secretary.*

Note—If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in the consent of the surety company. The consent of the surety company need only be executed on the Original Copy of the assignment.

[Stamps and Endorsements:
Received Sept. 5 Civic Tribes Feb 24 1916 Enclosure to No. 18810
Office of Indian Affairs Received May 13 1916—52026.]

Form G.—Series of 1908.—Must be executed in quadruplicate.

ASSIGNMENT OF OIL AND GAS LEASE.

Whereas, The Secretary of the Interior has heretofore approved an oil and gas mining lease, dated April 13th, 1912, entered into by and between The Kathleen Oil Company, a corporation, of Tulsa, Oklahoma, lessee, and Eastman Richard, guardian of Samuel Richard, a minor, lessor, covering the following-described lands in the Creek Nation, Oklahoma.

N½ of NW¼ and SW¼ of SW¼ of Sec. 4, Twp 17 North, Range 7 East.

Now therefore, for and in consideration of One ($1.00) dollars, the receipt of which is hereby acknowledged, the said The Kathleen Oil Company, the lessee in the above-described lease, hereby bargains, sells, transfers, assigns and conveys all the right, title, and interest of the lessee in and to said lease, subject to the approval of the Secretary of the Interior to Okla Oil Company a corporation, of Tulsa, Oklahoma. Said assignment to be effective from date of approval hereof by the Secretary of the Interior.

In witness whereof, the said lessee has hereunto set . . . . . hand and seal, this 12th day of February, 1916.

THE KATHLEEN OIL COMPANY,
(Seal) By H. F. SINCLAIR, *President.*
Attest: E. W. SINCLAIR, *Secretary.*

ACKNOWLEDGMENT OF CORPORATION.

State of Oklahoma, Tulsa County—ss.

Before me, Notary Public in and for said county and State, on the 12th day of February, 1916, personally appeared H. F. Sinclair to me known to be the identical person who subscribed the name of the maker thereof to the foregoing instrument as its President and acknowledged to me that he executed the same as his free and voluntary act and deed, and as the free and voluntary act and deed of such corporation, for the uses and purposes therein set forth.

(Seal) Paul Konz,
(My commission expires January 21, 1917.) Notary Public.

Duplicate. U. S. Fid. & Guar. Co.

[Endorsement Stamp: Received Supt. 5 Civ Tribes May 27 1916 Enclosure to Dept. No. 3449]

ACKNOWLEDGMENT OF INDIVIDUAL.

State of . . . . . , *County of* . . . . . .—ss.

Before me, ... in and for said county and State, on this . . . . . day of . . . . . ., personally appeared . . . . . to me known to be the identical person . . who executed the within and foregoing instrument, and acknowledged to me that . . . . . executed the same as . . . . . free and voluntary act and deed for the uses and purposes therein set forth.

. . . . . .

(My commission expires . . . . .).

ACCEPTANCE BY ASSIGNEE.

The assignee in the above and foregoing assignment, made subject to the approval of the Secretary of the Interior, hereby accepts such assignment and agrees to fulfill all the obligations, conditions, and stipulations in said described indenture of lease, when assigned, and the rules and regulations of the Secretary of the Interior applicable thereto, and to furnish proper bond guaranteeing a faithful compliance with said lease and this agreement.

In witness whereof, the said assignee has hereunto set its hand and seal this 21st day of February, 1916.

OKLA OIL COMPANY,
By FRANK HASKELL, *Vice-President.*

Attest: (Seal) C. E. HANE, *Secretary.*

CONSENT OF SURETY.

The . . . . . of . . . . . ; surety for . . . . . on the bond accompanying the lease above described, hereby consents to the assignment and transfer of said lease as above made . . . . . .

Dated at . . . . . ., this . . . . day of . . . . . , 191 . .

. . . . . .
. . . . . .
. . . . . .

Department of the Interior,
Washington, D. C., May 22 1916

Approved: Subject to the conditions attached to the lease.

BO SWEENEY,
Assistant Secretary.

Note: If bond accompanying the original lease is to remain in full force and effect it must be specifically so stated in

the consent of the surety company. The consent of the surety company need only be executed on the ORIGINAL COPY of the assignment.

Duplicate.

Lease No. 22731

Department of the Interior,
Washington, D. C. Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the SE4 of the SW4 of Sec. 4 T. 17 N. R. 7 by Kemp & Hayden to the Gypsy Oil Co.,

is APPROVED, with the understanding and provision that no rights, claims, or equities, as against future action by or under authority of Congress respecting oil or gas pipe line companies, shall be predicated upon this approval and subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES,
First Assistant Secretary. WCP

[Endorsement stamp: Received Sup 5 Civ Tribes May 27 1916 Enclosure to Dept No. 3449]

Department of the Interior,
Washington, D. C., May 22 1916

The assignment of this lease by the Kathleen Oil Company to the Okla Oil Company insofar as pertains to the N2 SW4 and SW4 SW4, Sec. 4, T. 17, R. 7, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

Bo SWEENEY,
Assistant Secretary.

U. S. Fid. & Guar. Co.

[Endorsement stamps:

Office of Indian Affairs Received May 13 1916 52026
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., May 4 1914

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, assignees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas Co., as to SE4 of SW4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN, *Assistant Secretary.*

[Endorsement stamps:

Office of Indian Affairs Received Apr. 18 1914 42255
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the S.E.¼ of SW4 of Sec. 4 T. 17 N. R. 7 E. by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES, *First Assistant Secretary.* WCP

Lease No. 22731

Department of the Interior,
Washington, D. C., Feb 24 1913

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW4 of the SW4 of Sec. 4 T. 17 N R 7 E is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamp: Office of Indian Affairs Received Feb. 21 1913 23610]

118 Lease No. 22731

Department of the Interior,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW4 of the SW4 of Sec. 4, T. 17 N. R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs Received Dec 27 1912 132434
Office of Indian Affairs Received Feb 21 1913 23610]

Lease No. 22731

Department of the Interior,
Washington, D. C. Nov 29 1912

The assignment of this lease insofar as pertains to SE4 of SW4 of Sec. 4 Twp 17 N R 7 East by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, Plaintiffs and Defendants, by their Solicitors of Record, filed Stipulation as to Record and Evidence on Appeal, which was approved by the Court, said Stipulation and Approval of the Court being in words and figures as follows:

Lease No. 22731

Department of the Interior,
Washington, D. C., May 4 1914

The assignment of an undivided one-fourth interest in this lease by Toxaway Oil Co., assignee of Kemp & Hayden, assignees of The Kathleen Oil Co., lessee, to Sperry Oil & Gas Co., as to SE4 of SW4 of 4–17–7, containing 40 acres, is APPROVED, effective only from date of approval, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN, *Assistant Secretary.*

[Endorsement stamps:

Office of Indian Affairs Received Apr. 18 1914 42255
Received May 12 1914 Union Agency Dept. No. 2120]

Lease No. 22731

Department of the Interior,
Washington, D. C., Jul 14 1913

The assignment of this lease insofar as pertains to an undivided one half interest in the S.E.¼ of SW4 of Sec. 4 T. 17 N. R. 7 E. by Kemp & Hayden to the Toxaway Oil Co. is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis. Effective from date of approval.

A. A. JONES, *First Assistant Secretary.* WCP

Lease No. 22731

Department of the Interior,
Washington, D. C., Feb 24 1913

This assignment of this lease by the Tartar Oil Co. to The Kathleen Oil Co. insofar as pertains to the SW4 of the SW4 of Sec. 4 T. 17 N R 7 E is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamp: Office of Indian Affairs Received Feb. 21 1913 23610]

118 Lease No. 22731

Department of the Interior,
Washington, D. C., Jan. 4, 1913.

The assignment of this lease by The Kathleen Oil Company to the Tartar Oil Company, as to the SW4 of the SW4 of Sec. 4, T. 17 N. R. 7 E., containing 40 acres, is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

[Endorsement stamps:

Office of Indian Affairs Received Dec 27 1912 132434
Office of Indian Affairs Received Feb 21 1913 23610]

Lease No. 22731

Department of the Interior,
Washington, D. C. Nov 29 1912

The assignment of this lease insofar as pertains to SE4 of SW4 of Sec. 4 Twp 17 N R 7 East by The Kathleen Oil Co. to Kemp & Hayden, copartners composed of E. R. Kemp and John F. Hayden is APPROVED, subject to the orders and regulations of this Department now existing or hereafter to be promulgated. The price basis for computation of royalty on oil shall be the market price as ascertained and declared by the Secretary of the Interior, and the royalty shall be 12½ per cent on such price basis.

LEWIS C. LAYLIN,
Assistant Secretary. H.

Endorsed: Filed Aug. 30, 1916, R. P. Harrison, Clerk United States District Court, Eastern District of Oklahoma.

And, to-wit, on the 21st day of September, A. D. 1916, Plaintiffs and Defendants, by their Solicitors of Record, filed Stipulation as to Record and Evidence on Appeal, which was approved by the Court, said Stipulation and Approval of the Court being in words and figures as follows:

Stipulation as to Record and Evidence on Appeal.

On this the 21st day of September, 1916, there having been duly filed in this cause petition for order allowing appeal and an order allowing appeal having been duly entered by the court, cost bond having been filed and approved and assignment of errors duly filed and notice of appeal having been heretofore duly given in open court, the plaintiffs, by their attorneys, and the defendants, by their attorneys, now, in open court, stipulate and agree and file this stipulation and agreement subject to the approval of the court.

It is agreed that, for the purposes of appeal, the record in this cause shall consist of the amended petition of plaintiffs, the answer of defendants, the decree and opinion of the court, and this stipulation, together with petition for appeal, order allowing appeal and assignment of errors, and that plaintiffs may file praecipe for printing of record, in accordance with this agreement, without further notice.

It is agreed that the undisputed evidence in this case disclosed that Samuel Richard was, during his lifetime, a full-blood member of the Creek Tribe of Indians, who received an allotment of land properly described in plaintiffs' petition; that an oil and gas lease was duly and properly executed thereon by the guardian of the said Samuel Richard, who was a minor, and that said oil and gas lease was duly approved by the Probate Court, as required by the laws of the State of Oklahoma, and was, in the month of June, 1912, approved by the Secretary of the Interior, as required by the laws of the United States; that operations under said lease began and the royalties and rents accruing under the said lease were paid to the defendants, who received the same and have, at all times since, held the same, keeping an account of the receipts under such lease, showing the amounts of money received and credited to the account of Samuel Richard, which money was received by them pursuant to the terms of said lease and which money they claimed to be entitled to hold only by reason of their official character. That defendants make no claim of any personal interest in said sum.

That, on the 24th day of January, 1916, the said Samuel Richard died, and that he left surviving him, as his nearest relatives and members of his immediate family, the following persons:

Eastman Richard, his father,
Jeannetta Richard, his sister, and
Rina Richard, his sister,

all of whom are duly enrolled full-blood members of the Creek

Tribe of Indians, and to one or all of whom, as an inheritance from the said Samuel Richard, the said land now belongs.

That Eastman Richard and R. D. Martin are the duly appointed, qualified and acting administrators of the estate of the said Samuel Richard, deceased.

It is further agreed that, at the date of the trial, the defendants had in their possession the sum of $216,154.16, a portion of which money was paid to the defendants as royalties prior to the death of the said Samuel Richard, and the remaining portion as royalties subsequent to the death of the said Samuel Richard.

LUCAS and TABOR,
Attorneys for Plaintiffs.

D. H. LINEBAUGH,
United States Attorney,

PAUL PINSON,
Special Assistant to United States Attorney,
Attorneys for Defendants.

The above stipulation as to the matters to be contained in the record for appeal in this cause and as to the evidence in this cause for the purpose of appeal, is hereby approved this the 21st day of September, 1916.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Sep. 21, 1916, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 28th day of February, A. D. 1918, the same being one of the days of the regular January 1918 term of the United States District Court for the Eastern District of Oklahoma, Court met pursuant to adjournment at Muskogee, Oklahoma. Present and presiding the Honorable RALPH E. CAMPBELL, Judge.

Among the proceedings had on this day is the following:

Decree.

On this 28th day of February, 1918, this cause came on for trial by agreement of the parties and on such date the court heard all the evidence in this cause and the argument of counsel and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises; and in compliance with directions contained in the mandate issued by the Circuit Court of Appeals on November 5, 1917, and filed in this court on November 7, 1917,

directing this court to enter a decree for plaintiffs in accordance therewith:

It is ordered, adjudged and decreed by the court as follows: That the defendants Gabe E. Parker as Superintendent for the Five Civilized Tribes and W. M. Baker as Cashier for the Five Civilized Tribes, account for and pay to the plaintiffs herein the sum of One Hundred Nineteen Thousand, Six Hundred Twenty-one Dollars and Thirty-two Cents ($119,621.32).

It is further ordered, adjudged and decreed by the court that the said defendants as such aforesaid officials, and their successors in office, properly endorse, surrender and deliver to plaintiffs United States Liberty Bonds in the sum of One Hundred and Sixty-two Thousand Dollars ($162,000.00) as well as any and all notes and mortgages, certificates of deposit, drafts and bonds or other evidence of indebtedness they have in their possession or control, representing royalty moneys received or collected from the Samuel Richard allotment of land hereinafter described.

It is further ordered, adjudged and decreed by the court that the defendants as such aforesaid officials, and each of them, and their successors in office, be, and they are hereby, perpetually enjoined, restrained and forbidden from receiving, collecting or interfering in the collection of any and all moneys accruing as rentals and from the proceeds of sale of royalty oil produced from the Samuel Richard allotment of land located in Creek County, State of Oklahoma, described as follows, to-wit:

> Southwest quarter, Section four (4), Township 17 North, Range Seven (7) East, of the Indian Base and Meridian according to the United States Survey thereof, containing 160 acres of land, more or less,

and the said defendants are further perpetually enjoined, restrained and forbidden from hereafter interfering with the management, control or supervision over said lands and of the rentals and royalties, if any, that have accrued therefrom or may hereafter accrue therefrom or any part thereof.

It is further by the court ordered, adjudged and decreed that the defendants Gabe E. Parker and W. M. Baker personally neither have nor claim any right, title or interest in the said funds, nor in the control or possession thereof, and that the said defendants in their personal capacity go hence without day, with their costs herein laid out and expended.

To all and every portion of which the defendants Gabe E. Parker as Superintendent for the Five Civilized Tribes and

W. M. Baker as Cashier for the Five Civilized Tribes, then and there excepted, and saved their exceptions; and thereupon, in open court, they, and each of them, gave notice of appeal to the Circuit Court of Appeals of the United States for the Eighth Judicial Circuit.

RALPH E. CAMPBELL, *Judge.*

Endorsed: Filed Feb. 28, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 1st day of March, A. D. 1918, the Defendants filed their Petition for Allowance of Appeal together with their Assignment of Errors, which appeal was by the Court allowed. Said Petition for Allowance of Appeal, Assignment of Errors and Order Allowing Appeal are in words and figures as follows:

Petition for Allowance of Appeal.

To the Honorable Ralph E. Campbell, Judge of the District Court:

The above named defendants, Gabe E. Parker as Superintendent for the Five Civilized Tribes and W. M. Baker as Cashier for the Five Civilized Tribes, conceiving themselves aggrieved by the order and decree made and entered in the above styled and numbered cause on the 28th day of February, 1918, wherein and whereby it was ordered by the court that the said defendants in their said official capacity pay over to the said plaintiffs all sums of money on that date held by them in their said official capacity accruing from and arising out of the production of oil upon the allotment of Samuel Richard, deceased, and to deliver to the said plaintiffs all other properties, notes, bonds and evidences of indebtedness then in their hands, said sums of money and said bonds being as follows, to-wit: The sum of $119,621.32 in cash, and the sum of $162,000.00 represented by a fully paid subscription for Liberty loan bonds of the second issue of 1917, do hereby appeal from the said order and decree of the said court so made on the 28th day of February, 1918, the said appeal having been duly authorized and directed by the Honorable Thomas W. Gregory, Attorney General of the United States, the head of the Department of Justice of the United States, and the Honorable Franklin K. Lane, Secretary of the Interior of the United States, and the head of the Interior Department of the government, to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons and upon the grounds specified in the assignments of error of the defendants filed herewith;

and said defendants pray that their said appeal be allowed and that the transcript of the records, papers and proceedings in this cause, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

W. P. McGINNIS,
United States Attorney,

PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Assignments of Error.

Come now the defendants in the above entitled and numbered action, and file the following, their assignments of error, upon which they, and each of them, will rely in their prosecution of an appeal from the decree entered by this honorable court on the 28th day of February, 1918, in favor of the plaintiffs herein, and against the defendants herein, in their official and representative capacity.

I.

The court erred in rendering judgment in favor of the plaintiffs and against the defendants herein.

II.

The court erred in failing and refusing to postpone the rendition of decree in this matter as final until the ultimate determination of the identical question upon appeal now pending in the Supreme Court of the United States heretofore perfected and filed in this cause.

III.

The court erred in rendering final judgment upon the 28th day of February, 1918, at a time when all matters and things in controversy herein were pending before the Supreme Court of the United States in an appeal heretofore perfected and filed from the United States Circuit Court of Appeals for the Eighth Circuit in the Supreme Court of the United States.

IV.

The court erred in entering the final decree and in refusing to postpone the operation of the decree until such time as the Supreme Court of the United States might hereafter render its decision and opinion in the case of Gabe E. Parker,

Superintendent for the Five Civilized Tribes, et al. versus Eastman Richard et al., being the identical cause now pending before this court, and now pending on appeal in the said Supreme Court of the United States as hereinbefore set out.

V.

That the said trial court erred as a matter of law in holding in effect that the moneys accruing from the allotment of Samuel Richard, a deceased full-blood Indian, and becoming by inheritance the property of Eastman Richard, a full-blood restricted Indian of the Creek Nation, could not properly be with-held and retained by the Superintendent for the Five Civilized Tribes under authority and direction of the Secretary of the Interior of the United States, for the benefit and protection of the said Eastman Richard as such restricted full-blood Creek Indian.

VI.

The court erred in restraining and enjoining the defendants herein, Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker as Cashier for the Five Civilized Tribes, from collecting or in any manner interfering with the collection of the royalties, rentals and profits accruing from and by virtue of the operation of an oil and gas mining lease upon the allotment of the said Samuel Richard, deceased, which said allotment was inherited by and is still the property of Eastman Richard, a full-blood heir of the said Samuel Richard, deceased, and which said oil and gas mining lease was, as required by law, approved by the Secretary of the Interior, and which said oil and gas mining lease, together with the rules and regulations prescribed by the Secretary, according to law, provided that said money should be paid to the said Superintendent and Cashier of the Five Civilized Tribes, and by them held for the benefit and protection of the said Eastman Richard, and with-held from him and disbursed at the discretion of the said officials of the said Interior Department of the United States.

VII.

The trial court erred in holding that the allotment of Samuel Richard, who died in the year 1916 leaving as his sole heir Eastman Richard, a full-blood Creek Indian, was, after the death of the said Samuel Richard, unrestricted land, and that the Secretary of the Interior has no right to supervise either the funds heretofore accrued from the said restricted allotment, whether before or after the death of the said Samuel Richard, or the funds hereafter to accrue from the said allot-

ment as royalties under the oil and gas mining lease hereinbefore referred to.

Wherefore defendants pray that the judgment of this court be reversed, and that judgment be rendered in this cause in accordance with the law and the facts, dismissing the bill of plaintiffs herein.

W. P. McGinnis,
United States Attorney,

By Paul Pinson,
Special Assistant to the United States Attorney,

Solicitors for Defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Order Allowing Appeal.

Upon motion of W. P. McGinnis, United States Attorney for the Eastern District of Oklahoma, and Paul Pinson, Special Assistant to the United States Attorney, solicitors for defendants herein, and their petition for order allowing appeal based upon the various assignments of error filed in this cause;

It is ordered that an appeal to the United States Circuit Court of Appeals for the Eighth Circuit be, and the same is hereby, allowed from the final decree heretofore rendered and filed in this cause on the 28th day of February, 1918; and it is further ordered that a certified transcript of the records, papers and proceedings herein be forthwith transmitted to the United States Circuit Court of Appeals for the Eighth Circuit at Saint Louis, Missouri.

And it appearing to the court that the appeal herein is being prosecuted by direction of certain heads of the Departments of the government, to-wit: at the direction and authority of the Honorable Thomas W. Gregory, Attorney General of the United States, and the Honorable Franklin K. Lane, Secretary of the Interior of the United States, and that the defendants herein are in no wise personally interested in the outcome of this litigation, but are acting solely upon such orders, direction and authority, it is by the court ordered that said appeal be without bond, and that the judgment hereinbefore rendered be superseded and execution thereon stayed during the pendency of the appeal herein.

Ralph E. Campbell, *Judge.*

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

And, to-wit, on the 1st day of March, A. D. 1918, the Defendants filed Notice and Election as to Printed Transcript, and acknowledgment of service thereof, which are in words and figures as follows:

Notice and Election as to Printing Transcript.

To the Honorable R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma.

You are hereby notified that Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker as Cashier for the Five Civilized Tribes, having appealed from the decree of this court entered herein against them in the above entitled cause on, to-wit: the 28th day of February, 1918, now elect to have the transcript of the record in said cause printed under your official supervision under the Act of Congress of February 13, 1911, and respectfully request that the transcript in said cause be printed as required by law under your direction in accordance with this election; and you are requested to make a transcript in the above entitled cause to be printed and filed in the United States Circuit Court of Appeals for the Eighth Circuit, pursuant to the appeal allowed in said cause, said transcript to be printed at the expense of the United States of America under its contract heretofore entered into with the co-partnership doing business under the firm name of Guyette & Humphry at Muskogee, Oklahoma; and you are requested to include in said transcript of record the following and no other papers or exhibits:

1. Amended Petition.
2. Answer of Defendants.
3. Decree rendered February 28, 1918.
4. Stipulation of counsel as to pleading and evidence material for appeal, as approved by the court herein on, to-wit: the 21st day of September, 1916.
5. Petition for order allowing appeal.
6. Assignment of Errors.
7. Order allowing appeal.
8. This praecipe and acceptance, and agreement attached hereto.
9. Clerk's certificate.

W. P. McGINNIS,
United States Attorney,

PAUL PINSON,
Special Assistant to the United States Attorney,
Solicitors for Defendants.

The undersigned solicitors for plaintiffs herein hereby acknowledge receipt of the above and foregoing designation of parts of the record necessary for the consideration of the errors assigned by the appellants, and waive the designation of any further part or parts of the records, thereby agreeing that the above includes all the parts of said record necessary for the consideration of the errors assigned by the appellants save and except that it is hereby stipulated between the said attorneys for the defendants and the attorneys for the plaintiffs herein that the evidence in this cause as adduced before the trial court showed that the amount of money in the hands of the defendants in this action on the 28th day of February, 1918, was as set out in the judgment herein, to-wit: $119,621.32 in cash and $162,000.00 in Liberty Loan Bonds of the United States.

It is further agreed on the part of the plaintiffs by their counsel that the record in this cause on appeal shall be printed under the supervision of the Clerk of the United States District Court for the Eastern District of Oklahoma.

Dated this 1st day of March, 1918.

J. B. LUCAS, and
BRITTON N. TABOR,
Solicitors for plaintiffs.

W. P. MCGINNIS,
United States Attorney,
PAUL PINSON,
Special Assistant United States Attorney,
Solicitors for defendants.

Endorsed: Filed Mar. 1, 1918, R. P. Harrison, Clerk U. S. District Court, Eastern District of Oklahoma.

Certificate of Clerk.

United States of America, Eastern District of Oklahoma—ss.

I, R. P. Harrison, Clerk of the United States District Court for the Eastern District of Oklahoma, do hereby certify that the above and foregoing is a full, true and correct transcript of so much of the record in the case of *Eastman Richard and R. D. Martin, co-administrators of the Estate of Samuel Richard, Deceased*, v. *Gabe E. Parker and W. M. Baker, and Gabe E. Parker as Superintendent for the Five Civilized Tribes, and W. M. Baker, as Cashier for the Five Civilized Tribes*, No. 2322 Equity, as was ordered by praecipe of counsel

herein to be prepared and authenticated, as the same appears from the records in my office.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the said court at my office, in the City of Muskogee, this 23rd day of March, 1918.

R. P. HARRISON, *Clerk;*

(Seal) By H. E. BOUDINOT, *Deputy.*

44 And thereafter the following proceedings were had in said cause, in the Circuit Court of Appeals, viz:

(Appearance of Mr. W. P. McGinnis, U. S. Attorney, and Mr. Alvin F. Molony, Special Asst. to the U. S. Attorney, as Counsel for Appellants.)

United States Circuit Court of Appeals, Eighth Circuit.

GABE E. PARKER ET AL., APPELLANTS,
vs.
EASTMAN RICHARDS ET AL. } No. 5147.

... clerk will enter my appearance as counsel for the appellants.

W. P. MCGINNIS,
United States Attorney, Muskogee, Oklahoma.

ALVIN F. MOLONY,
Special Assistant to the United States, Attorney, Muskogee, Oklahoma.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, Apr. 9, 1918.

(Appearance of Counsel for Appellees.)

The clerk will enter my appearance as counsel for the appellees.

J. B. LUCAS,
Checotah, Okla.

BRITTON H. TABOR,
Checotah, Okla.

45 (Endorsed): Filed in U. S. Circuit Court of Appeals, Apr. 29, 1918.

(Appearance of Mr. C. W. Miller, Special Asst. U. S. Attorney, as Counsel for the Appellants.)

The clerk will enter my appearance as counsel for the appellants.

C. W. MILLER,
Special Asst. U. S. Atty.

(Endorsed): Filed in U. S. Circuit Court of Appeals, May 27, 1918.

(Motion of Appellees to dismiss Appeal.)

Comes now Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, the appellees in this cause No. 5147 styled as above, and moves this honorable court to dismiss

this appeal for the reason and upon the grounds that this is a second appeal brought in this court, and is one in which the same matters of facts and of law were involved in this same action, which have heretofore been determined by this court in a previous appeal in a decree rendered by this court on September 3, 1917, in cause No. 4799 hereof between the same parties litigant herein and involving the same subject matter.

Appellees respectfully state to this court that during the month of November, 1916, they filed in this court an appeal from a
46 decree made by the U. S. District Court for Eastern District of Oklahoma, between the same parties litigant herein and which involved the same subject matter involved herein and which was and is numbered as cause No. 4799 of this court; that in said cause which was heretofore presented to this court; this honorable court filed an opinion on August 21, 1917, and afterwards on September 3, 1917, entered its decree reversing the judgment in favor of the complainants, Eastman Richard et al., and against the said Gabe E. Parker et al., as more fully appears by the opinion and decree rendered by this court in said cause No. 4799 hereof, and which constitute a part of the permanent records of this court in cause No. 4799 and are hereby referred to.

Appellees further respectfully state to this court that thereafter and on November 5, 1917, a mandate was issued in cause No. 4799, directing the U. S. District Court for Eastern District of Oklahoma to enter a judgment and decree in favor of the complainants, Eastman Richard et al., and against the said Gabe E. Parker et al., as directed by the decree entered by this court in cause No. 4799 hereof, and as fully appears by the said mandate which is a part of the records of this court in cause No. 4799, and a copy of which said mandate is hereto attached for convenience of the court and marked Exhibit "A" hereof.

Appellees further state to this court that in compliance with said decree so rendered in cause No. 4799 between the same parties litigant herein (see Richard vs. Parker, 245 Fed. 330), that on February 28, 1918, the District Court for the Eastern District of Oklahoma entered a decree in favor of the appellees and against the appellants herein, as more fully is shown by a copy of said decree hereto attached marked Exhibit "B" and made a part hereof for convenience and is shown on pages 35–37 of transcript of record filed herein on April 5, 1918, in this cause No. 5147; that said decree was entered by said district court as directed in the decree and
47 mandate of this court in cause No. 4799, and that this appeal is now brought to this court by the appellants herein because of the rendition by the district court of its decree in favor of the appellees herein, which the said district court entered as directed by this court in cause No. 4799 as above stated.

Appellees further show to this honorable court that this second appeal now before this court in this cause, as shown by the records

of this court, involves the same matters of facts and questions of law as were determined by this court in the previous appeal in cause No. 4799 between the same parties litigant herein, and that by reason thereof this appeal should now be, by this court, immediately dismissed.

144 Fed. 342, Mutual Reserve Assn. v. Ferrenbach.

124 Fed. 170, Guarantee Co. v. Phenix Ins. Co.

104 Fed. 649, Haley v. Kilpatrick.

20 How. 467, 15 L. Ed. 969, Roberts v. Cooper.

The decree entered by the District Court on Feby. 28, 1918, from which this appeal is now brought to this court, was entered in accordance with the mandate issued by this court on Nov. 5, 1917, in cause No. 4799, and therefore this appeal should be dismissed.

78 Fed. 208, Merrill v. National Bank of Jacksonville.

97 Fed. 394, Tyler Min. Co. v. Last Chance Min. Co.

126 Fed. 746, Minn. Moline Plow Co. v. Dowagiac Plow Co.

77 Fed. 241, Gregory v. Pike.

76 Fed. 403 in de Pike.

Inasmuch as it is an universal rule of this court, and of all other courts, that a second appeal will not be entertained by this court, where the parties litigant are the same and the same ques-
48 tions of law are involved in this cause as were involved in the previous appeal, and inasmuch as it is a well-settled principle of law and practice that where a decree is entered in a cause as directed by the mandate of higher court in the same cause, that no apepal therefrom is permissable, as are the facts in this cause, we do not deem it necessary to file any extended brief or argument herein, but simply present to this court this motion to dismiss on the facts herein as shown by the records of this court in cause No. 4799 and this cause No. 5147.

Wherefore, appellees move this honorable court to dismiss this appeal, and also to make an order that the U. S. District Court for the Eastern District of Oklahoma to make an order directing the appellants to comply with the judgment entered by said District Court on Feby. 28, 1918 (35 Tr. Record), which said judgement was entered by that court in compliance with the directions contained in the mandate issued by this court on Nov. 5, 1917, in the previous appeal in No. 4799.

J. B. LUCAS and BRITTON H. TABOR,
Solicitors for Appellees.

(EXHIBIT "A.")

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States of America, to the honorable the judges of the District Court of the United States for the Eastern District of Oklahoma.

Greeting:

Whereas, lately in the District Court of the United States
49 for the Eastern District of Oklahoma, before you, or some of you, in a cause between Eastman Richard and R. D. Martin, co-administrators of the 'state of Samuel Richard, deceased, plaintiffs, and Gabe E. Parker, and Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants, wherein the decree of the said District Court in said cause, entered on the 21st day of September, A. D. 1916, is in the following words, viz:

"It is ordered, adjudged and decreed by the court that the plaintiffs take nothing by this action, but that the defendants have and recover from the plaintiffs all costs herein laid out and expended.

"For all of which let proper execution issue.

"To all of which plaintiffs in open court except, and their exceptions are allowed, and thereupon the plaintiffs give notice of appeal in open court.

"RALPH E. CAMPBELL, *Judge*."

as by the inspection of the transcript of the record of the said district court, which was brought in to the United States Circuit Court of Appeals, Eighth Circuit, by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears;

And whereas, at the September term, in the year of our Lord one thousand and nine hundred and seventeen, the said cause came on to be heard before the said United States Circuit Court of Appeals, on the transcript of record from the district court, and was argued by counsel.

50 On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said district court in this cause be, and the same is hereby, reversed without costs to either party in this court.

It is further ordered that this cause be, and the same is hereby, remanded to the said district court with directions to enter a decree for complainants in accordance with the opinion of this court.

SEPTEMBER, 3, 1917.

You, therefore, are hereby commanded that such further proceedings be had in said cause, in conformity with the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness, the Honorable Edward D. White, Chief Justice of the United States, the fifth day of November, in the year of our Lord one thousand nine hundred and seventeen.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals, Eighth District.

(Endorsed:) 2322. United States Circuit Court of Appeals, No. 4799, September Term, 1917. Eastman Richard, et al., Appellants,

v. Gabe E. Parker et al. Filed Nov. 7, 1917. R. P. Harrison, Clerk U. S. District Court. Mandate.

* 51 (EXHIBIT "B.")

In the United States District Court for the Eastern District of Oklahoma.

EASTMAN RICHARD AND R. D. MARTIN, co-administrators of the estate of Samuel Richard, deceased, plaintiffs, *vs.* GABE E. PARKER, AND GABE E. PARKER AS Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, defendants.	No. 2322. Equity.

Decree.

On this 28th day of February, 1918, this cause came on for trial by agreement of the parties and on such date the court heard all the evidence in this cause and the argument of counsel, and thereupon, upon consideration of such evidence and argument, the court being well and sufficiently advised in the premises; and in compliance with directions contained in the mandate issued by the Circuit Court of Appeals on November 5, 1917, and filed in this court on November 7, 1917, directing this court to enter a decree for the plaintiffs in accordance therewith:

It is ordered, adjudged, and decreed by the court as follows: That the defendants Gabe E. Parker as superintendent for the Five Civilized Tribes, and W. M. Baker as cashier for the Five Civilized Tribes, account for and pay to the plaintiffs herein the sum of one hundred nineteen thousand six hundred twenty dollars and thirty-two cents ($119,621.32).

52 It is further ordered, adjudged, and decreed by the court that the said defendants as such aforesaid officials, and their successors in office, properly endorse, surrender, and deliver to plaintiffs United States Liberty bonds in the sum of one hundred and sixty-two thousand dollars ($162,000.00), as well as any and all notes and mortgages, certificates of deposit, drafts, and bonds or other evidence of indebtedness they have in their possession or control, representing royalty moneys received or collected from the Samuel Richard allotment of land hereinafter described.

It is further ordered, adjudged, and decreed by the court that the defendants as such aforesaid officials, and each of them, and their successors in office, be and they are hereby, perpetually enjoined, restrained, and forbidden from receiving, collecting, or interfering in

the collection of any and all moneys accruing as rentals and from the proceeds of said of royalty oil produced from the Samuel Richard allotment of land located in Creek County, State of Oklahoma, described as follows, to wit: Southwest quarter section four (4), township 17 north, range seven (7) east, of the Indian base and meridian according to the United States survey thereof, containing 160 acres of land, more or less, and the said defendants are further perpetually enjoined, restrained, and forbidden from hereafter interfering with the management, control, or supervision over said lands and of the rentals and royalties, if any, that have accrued therefrom or may hereafter accrue therefrom or any part thereof.

It is further by the court ordered, adjudged, and decreed that the defendants Gabe E. Parker and W. M. Baker personally neither have nor claim any right, title, or interest in the said funds, nor in the control or possession thereof, and that the said defend-
53 ants in their personal capacity go hence without day, with their costs herein laid out and expended.

To all and every portion of which the defendants Gabe E. Parker as superintendent for the Five Civilized Tribes and W. M. Baker as cashier for the Five Civilized Tribes, then and there excepted, and saved their exceptions; and thereupon, in open court, they, and each of them, gave notice of appeal to the Circuit Court of Appeals of the United States for the Eighth Judicial Circuit.

RALPH E. CAMPBELL, *Judge.*

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1918.

(Notice of Motion to dismiss Appeal.)

To: The appellants above named and to their solicitors of record, W. P. McGinnis, Paul Pinson, and A. F. Malony:

Notice.

You are hereby notified that appellees intend to file a motion to dismiss the appeal in the above numbered and style cause and that the same will be presented to the honorable judges of the above court on May 27th, 1918, as a soon thereafter as counsel will be heard by the court, at St. Paul, Minn.; and you are hereby now served with a copy of the motion to dismiss, including brief attached thereto, which will be filed. You will kindly govern yourselves accordingly.

54 Dated this 9th day of May, 1918.

J. B. LUCAS,
BRITTON H. TABOR,
Solicitors for Appellees.

Acceptance of Service of Notice and of Copy of Motion to Dismiss.

We accept service of the foregoing notice and of copy of motion to dismiss appeal, this 9th day of May, 1918.

W. P. McGINNIS,
United States Attorney.
ALVIN F. MOLONY,
Special Asst. United States Attorney.
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 20, 1918.

(Response to Motion to Dismiss.)

And now come the appellants in the above entitled and numbered cause by their undersigned solicitors, and for their response to the motion to dismiss heretofore filed herein by the appellees, respectfully show unto the court as follows:

That this suit originated in the District Court of Muskogee County, State of Oklahoma, and came into the United States District Court for the Eastern District of Oklahoma upon petition and bond for removal, the transcript having been filed in the office
55 of the clerk of the latter court on August 18, 1916, and having been docketed therein as Equity No. 2322. On the same day, the plaintiffs in the action filed their first amended petition, and on August 30, 1916, the defendants filed their answer thereto.

On September 12, 1916, the said United States District Court for the Eastern District of Oklahoma entered a decree in said cause dismissing plaintiffs' petition therein; and on September 21, 1916, the plaintiffs having filed a petition for appeal and assignment of errors, the court entered an order allowing the plaintiffs to appeal from the decree to the United States Circuit Court of Appeals for the Eighth Circuit. The original certified transcript of the record on appeal, together with the required number of copies, were filed in the office of the clerk of this court at St. Louis, Missouri, on the ——— day of November, 1916, and docketed therein as No. 4799. On August 21, 1917, this court filed an opinion in the cause, reversing the decree of the lower court and remanding the cause with directions that a decree be entered for the appellants in that appeal (plaintiffs below) in accordance with the opinion of this court. Afterwards, on September 3, 1917, this court entered its decree to the same effect; and on November 5, 1917, issued a mandate reversing the judgment below without costs to either party, and remanding the cause to the lower court with directions to enter a decree for plaintiffs below, in accordance with the opinion of the appellate court.

On November 30, 1917, the appellees in appeal No. 4799 (defendants below) having filed herein their petition for appeal from the decree of this court to the Supreme Court of the United States and

their assignment of errors, the Honorable Kimbrough Stone, one of the judges of this court, made an order allowing an appeal
56 from the decree of this court to the United States Supreme Court without bond, and signed and issued a citation for service on the adverse parties; and on December 1, 1917, the petition for appeal to the Supreme Court of the United States, assignment of errors, order allowing the appeal and citation were duly filed in the office of the clerk of this court at St. Louis, Missouri. The original citation and acceptance of service thereof was thereafter duly filed in the office of the clerk of this court on December 5, 1917.

On December 6, 1917, the clerk of this court forwarded the original certified transcript of the record on appeal in said cause, together with the required number of copies thereof, to the Solicitor General at Washington, D. C., and said record on appeal was thereafter duly filed in the office of the clerk of the United States Supreme Court at Washington, D. C., and docketed therein as No. 786 of the October Term.

Thereafter, on December 29, 1917, the said mandate of this court was spread of record in the office of the clerk of the United States District Court for the Eastern District of Oklahoma, pursuant to the order of the latter court of that date; and on February 28, 1918, the said United States District Court entered its decree in accordance with the opinion and mandate of this court.

The appellants herein gave notice of appeal from the decree entered below on February 28, 1918, in open court; and on March 1, 1918, filed their petition for appeal to this court and assignment of errors, which petition for appeal to this court was allowed by the said United States District Court without bond on the same day, namely, March 1, 1918. On April 5, 1918, the original certified transcript of the record in said cause, together with the required number of copies thereof, were duly filed in the office of the clerk of
57 this court at St. Louis, Missouri, and the same thereupon duly docketed therein as No. 5147. This is the appeal sought to be dismissed by appellees.

On November 3, 1917, the Department of Justice at Washington, D. C., wrote a letter to the United States attorney at Muskogee, Oklahoma, wherein the latter was directed to prosecute an appeal from the decree of this court rendered in appeal No. 4799 on September 3, 1917, to the Supreme Court of the United States, which letter, of course, was not received by the United States attorney until several days later. This was after the expiration of the sixty-day limitation within which to supersede the decree of this court under sec. 1007, Rev. Stat.

It thus appears that the appeal to the Supreme Court was prosecuted before the mandate of this court was spread of record, and before the decree appealed from herein was entered in the lower court.

It is frankly stated that the sole purpose of this, the second appeal of this case, is to obviate any difficulty the Supreme Court may experience in dealing with the case in the District Court because of

the failure of the Government to supersede the decree of this court within sixty days after the rendition thereof, and further to stay execution in the District Court until the matters in controversy have been fully and fairly considered and finally decided by the Supreme Court in appeal No. 786, now pending before it.

The case of Merrill vs. National Bank of Jacksonville, 173 U. S. 131, furnishes a precedent for the course followed by the Government in this case. There the Circuit Court entered its decree January 29, 1896, from which an appeal was prosecuted to the Circuit Court of Appeals for the Fifth Circuit. The latter court reversed and remanded the cause with directions to the Circuit Court.

58 From that decree, after the mandate of the Circuit Court of Appeals had been sent down to the Circuit Court and proceedings had thereunder, an appeal was taken and perfected to the Supreme Court and was numbered 54 therein. The Circuit Court entered a decree in pursuance of the mandate of the Circuit Court of Appeals on July 27, 1896, and a second appeal was prosecuted therefrom to the Circuit Court of Appeals, which was by that court dismissed on motion of the appellees. From the decree of dismissal entered in the Circuit Court of Appeals, an appeal was allowed and perfected to the Supreme Court and numbered 55 therein. In holding that the sending down of the mandate and the entry of the decree by the Circuit Court before the appeal in No. 54 was prosecuted to the Supreme Court did not operate to cut off that appeal, and that the second appeal enabled the Supreme Court to obviate any difficulty in dealing with the cause in the Circuit Court, the court said:

"The Circuit Court of Appeals reversed the decree of the Circuit Court with specific directions. Nothing remained for the Circuit Court to do except to enter a decree in accordance with the mandate, and, for the purposes of an appeal to this court, the decree of the Circuit Court of Appeals was final. The mandate went down and the Circuit Court entered its decree in strict conformity therewith before the appeal in No. 54 was prosecuted to this court. This promptness of action did not, however, cut off that appeal, and any difficulty in our dealing with the cause in the Circuit Court was obviated by the second appeal, which brings before us in No. 55 the record subsequent to the first decree of the Circuit Court of Appeals."

59 For the reasons stated, the motion to dismiss ought to be denied.

Respectfully submitted.

W. P. McGinnis,
United States Attorney.
C. W. Miller,
Alvin F. Molony,
Special Assistants to the United States Attorney,
Solicitors for Appellants.

(Endorsed:) Filed in U. S. Circuit Court of Appeals, May 23, 1918.

(Decree.)

United States Circuit Court of Appeals, Eighth Circuit.

MAY TERM, 1918.
Monday, May 27, 1918.

GABE E. PARKER, AND GABE E. PARKER, AS SUPERINTENDENT for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as Cashier for the Five Civilized Tribes, appellants,
vs.
EASTMAN RICHARD AND R. D. MARTIN, CO-ADMINISTRATORS of the Estate of Samuel Richard, deceased. } No. 5147.

Appeal from the District Court of the United States for the Eastern District of Oklahoma.

60 This cause came on this day to be heard on the notice and motion of appellees to dismiss the appeal herein for the reason and upon the grounds that this is a second appeal to this court and one in which the same matters were involved in this same action which have heretofore been determined by this court in a previous appeal in a decree rendered by this court on September 3, 1917, in cause No. 4799 between the same parties litigant herein and involving the same subject matter; and also upon the response of appellants to said motion, Mr. Britton H. Tabor appearing for appellees in support of said motion and Mr. C. W. Miller appearing for appellants in opposition thereto.

On consideration whereof, it is now here ordered by this court, in pursuance of said motion, that the appeal in this cause be, and the same is hereby, dismissed without costs to either party in this court.

Counsel for appellants in open court excepts to the foregoing order and gives notice of appeal to the Supreme Court of the United States.

MAY 27, 1918.

(Petition for Appeal, Assignment of Errors, and Order allowing Appeal to Supreme Court, U. S.)

Petition for Appeal to the Supreme Court, U. S.

Gabe E. Parker, Gabe E. Parker as Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, as above named, by their solicitors

of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Alvin F. Molony, special assistant to the United States attorney for the Eastern District of Oklahoma,
61 conceiving themselves aggrieved by the decision and decree of the United States Circuit Court of Appeals made in the above entitled cause on the 27th day of May, 1918, do hereby appeal from said decision and decree to the Supreme Court of the United States, for the reasons specified in the assignment of errors, filed herewith, and pray that this appeal may be allowed and that a transcript of the record and proceedings in said cause, with all things concerning the same, duly authenticated, may be sent to the Supreme Court of the United States.

W. P. McGinnis,
United States Attorney,
Alvin F. Molony,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Assignment of Errors on Appeal to the Supreme Court, U. S.

Now come Gabe E. Parker, Gabe E. Parker as Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants, by their solicitors of record, W. P. McGinnis, United States attorney for the Eastern District of Oklahoma, and Alvin F. Molony, special assistant to the United States attorney for the Eastern District of Oklahoma, and say, that in the record and proceedings in this cause there is manifest error and that the United States Circuit Court of Appeals for the Eighth Circuit erred in this, to wit:

First. The court erred in sustaining the motion of the appellees to dismiss the appeal of the appellants from the decree of the United States District Court for the Eastern District of Oklahoma made and entered on the 28th day of February, 1918.

62 Second. The court erred in not overruling the said motion of the appellees to dismiss the appeal of the appellants from said decree.

Third. The court erred in dismissing said appeal.

Fourth. The court erred in failing and refusing to postpone its decision upon said motion to dismiss said appeal until the ultimate determination of the identical questions involved herein now pending upon appeal in the Supreme Court of the United States from the decision and decree of the United States Circuit Court of Appeals for the Eighth Circuit made and entered in said cause on the 3d day of September, 1917.

Fifth. The court erred in dismissing said appeal from the said decree of the United States District Court for the Eastern District of Oklahoma made and entered on the 28th day of February, 1918, at a

time when all matters and things in controversy herein were pending before the Supreme Court of the United States in the said appeal heretofore perfected and prosecuted from the said decision and decree of this court made and entered on the 3d day of September, 1917, to the Supreme Court of the United States.

Sixth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that the appellees herein, Eastman Richard and R. D. Martin, coadministrators of the estate of Samuel Richard, deceased, should recover from the appellants the moneys sued for or any portion thereof.

Seventh. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land and moneys in con-
63 troversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect, and disburse the moneys which had accrued prior to the death of said Samuel Richard, under the terms of the oil and gas mining lease covering his restricted allotment.

Eighth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land and moneys in controversy had become vested through inheritance in Eastmas Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to retain, control, collect and disburse the moneys which had accrued since the death of said Samuel Richard, under the terms of the oil and gas mining lease covering his restricted allotment.

Ninth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby holding, deciding and decreeing that after the title to the land in controversy had become vested through inheritance in Eastman Richard, a full-blood Creek Indian and the only heir of Samuel Richard, deceased, the Secretary of the Interior and the appellants herein were divested of the power to supervise the operations carried on under the terms of the oil and gas mining lease covering the restricted allotment of said Samuel Richard, deceased.

Tenth. The court erred in sustaining said motion to dismiss and dismissing said appeal, and in effect thereby sustaining and affirming the decree of the United States District Court for the
64 Eastern District of Oklahoma made and entered for the appellees herein on the 28th day of February, 1918.

Wherefore, the appellants pray that such judgment and decree of the United States Circuit Court of Appeals for the Eighth Circuit be reversed, and that the Supreme Court of the United States of

America render such proper decree as shall conform to the facts disclosed by the record and the law applicable thereto.

W. P. McGINNIS,
United States Attorney.
ALVIN F. MOLONY,
Special Assistant to the United States Attorney,
Solicitors for Appellants.

Order Allowing Appeal to Supreme Court, U. S.

It is hereby ordered that the appeal in the above entitled cause in the United States Circuit Court of Appeals for the Eighth Circuit be and is hereby allowed as prayed, and it further appearing that the appeal herein is being prosecuted by the United States of America for and on behalf of certain officials of the Department of the Interior, to wit, the Superintendent and Cashier, respectively, for the Five Civilized Tribes, and answerable herein only in their official capacity, it is further ordered that said appeal be without bond.

WALTER H. SANBORN,
United States Circuit Judge, Eighth Circuit.

JUNE 20, 1918.

65 (Endorsed:) Filed in U. S. Circuit Court of Appeals, Jun. 20, 1918.

66 Citation.

United States of America, ss.

To Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States at Washington, D. C., within thirty days from and after the date hereof, pursuant to an appeal allowed and filed in the clerk's office of the United States Circuit Court of Appeals for the Eighth Circuit from a judgment and order of dismissal rendered in a cause wherein Gabe E. Parker, Gabe E. Parker as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, are appellants, and you are appellees, to show cause, if any there be, why the order, judgment and decree dismissing the appeal of the said appellants from the decree of the United States District Court for the Eastern District of Oklahoma made and entered for the appellees herein on the 28th day of February, 1918, and in effect thereby sustaining and affirming the said decree of the said United States District Court for the Eastern District of Oklahoma in the above entitled cause, as in said appeal mentioned, should not be

corrected and why speedy justice should not be done to the parties in that behalf.

67 Witness, the Honorable Walter H. Sanborn, United States Circuit Judge in and for the Eighth Circuit, at St. Paul, Minnesota, this 20th day of June, A. D. 1918.

WALTER H. SANBORN,
United States Circuit Judge,
Eighth Circuit.

68 We, the undersigned solicitors of record of Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased, appellees, do hereby accept and acknowledge service of the within citation this 24th day of June, A. D. 1918.

J. B. LUCAS,
BRITTON H. TABOR,
Solicitors for appellees, Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased.

69 (Clerk's Certificate.)

United States Circuit Court of Appeals, Eighth Circuit.

I, E. E. Koch, clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing contains the transcript of the record from the District Court of the United States for the Eastern District of Oklahoma as prepared, printed and certified by the clerk of said District Court to the United States Circuit Court of Appeals in pursuance of the act of Congress approved February 13, 1911, and full, true, and complete copies of all the pleadings, record entries, and proceedings, had and filed in the United States Circuit Court of Appeals except the full captions, titles and endorsements omitted in pursuance of the rules of the Supreme Court of the United States, in a certain cause in said Circuit Court of Appeals wherein Gabe E. Parker et al. were appellants, and Eastman Richard et al., were appellees, No. 5147, as full, true and complete as the originals of the same remain on file and of record in my office.

I do further certify that the original citation with acceptance and acknowledge of service endorsed thereon is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in the city of St. Louis, Missouri, this tenth day of July, A. D. 1918.

[SEAL.]

E. E. KOCH,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

(Endorsed:) No. 5147. In the United States Circuit Court of Appeals for the Eighth Circuit. Gabe E. Parker et al., appellants, vs. Eastman Richard et al., appellees. Citation on appeal to Supreme Court, U. S. Filed June 26, 1918. E. E. Koch, clerk.

(Endorsed on cover:) File No. 26,649. U. S. Circuit Court of Appeals, 8th Circuit. Term No. 563. Gabe E. Parker, Gabe E. Parker, as superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker, as cashier for the Five Civilized Tribes, appellants, vs. Eastman Richard and R. D. Martin, co-administrators of the estate of Samuel Richard, deceased. Filed July 17th, 1918. File No. 26,649.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

GABE E. PARKER, GABE E. PARKER AS Superintendent for the Five Civilized Tribes, W. M. Baker, and W. M. Baker as cashier for the Five Civilized Tribes, appellants,

v.

EASTMAN RICHARD AND R. D. MARTIN, co-administrators of the estate of Samuel Richard, deceased.

No. 563.

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

MOTION BY THE UNITED STATES TO ADVANCE.

Comes now the Solicitor General on behalf of the United States and respectfully moves that the above entitled cause be advanced to be heard together with case No. 313 bearing the same title and between the identical parties.

In case No. 313, Richard, a full-blood Creek Indian, as administrator and heir of his son, sued Parker as Superintendent for the Five Civilized Tribes, to recover royalties in the sum of $216,145.16 accumulated during the lifetime of the son on an oil and

107008—19

gas lease made under section 2 of the Act of May 27, 1908, 35 Stat. 312. The District Court entered judgment in favor of Parker, the defendant. The Circuit Court of Appeals reversed the decision of the District Court and decreed that the money held by the Superintendent for the Five Civilized Tribes should be paid over to the administrator and heir of the Indian. An appeal was taken from the judgment of the Circuit Court of Appeals to this court too late to operate as a supersedeas under section 1007 of the Revised Statutes. *Title Guaranty Co.* v. *General Electric Co.*, 222 U. S. 401, and cases cited. The mandate having gone down from the Circuit Court of Appeals, the District Court entered its decree in conformity therewith while the appeal was pending in this court, and this case, No. 563, brings up for review the record subsequent to the first decree of the Circuit Court of Appeals and was brought to obviate any difficulty in dealing with the cause in the District Court if the decree of the Court of Appeals in No. 313 should be reversed. *Merrill* v. *National Bank*, 173 U. S. 131, 134, 147.

Notice of this motion has been served on opposing counsel.

ALEX. C. KING,
Solicitor General.

MARCH , 1919.

O

In the Supreme Court of the United States.

OCTOBER TERM, 1918.

GABE E. PARKER, GABE E. PARKER as superintendent for the Five Civilized Tribes, W. M. BAKER, and W. M. BAKER as cashier for the Five Civilized Tribes, appellants,

v.

EASTMAN RICHARD AND R. D. MARTIN, co-administrators of the estate of SAMUEL RICHARD, deceased.

Nos. 313 and 563.

APPEALS FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF FOR APPELLANTS.

STATEMENT.

The appeal in case No. 313 (R. 49) is from a decree of the Circuit Court of Appeals for the Eighth Circuit (R. 47) which, reversing a decree of the District Court for the Eastern District of Oklahoma (R. 36), directed the appellants to pay over to the appellees $216,154.16 received by them as royalties under an oil and gas lease on a Creek Indian allotment in

Oklahoma, and enjoined them from collecting any further royalties under the lease.

Opinions: D. C. (R. 32); C. C. A., Stone, C. J., dissenting (R. 43), 245 Fed. 330.

In case No. 563 the parties are the same and the appeal is from an order of the Court of Appeals dismissing an appeal from a decree of the District Court entered in conformity with the mandate of the Court of Appeals in No. 313. The appeal to this court in No. 313 was properly taken in time to bring the case up for review but too late to supersede the decree appealed from. *Title Guaranty Co.* v. *General Electric Co.*, 222 U. S. 401. And the appeal in No. 563 was taken to prevent the money from being paid over and thus obviate any difficulty in dealing with the cause in the District Court if the decree of the Court of Appeals in No. 313 should be reversed. *Merrill* v. *National Bank*, 173 U. S. 131, 134, 147. Hence the determination of both cases depends upon the record in No. 313, to which alone reference will be made.

The case was heard on the petition (R. 2), the answer (R. 8) and a stipulation (R. 39), which show the following undisputed facts: The oil and gas lease in question covers the 160-acre allotment of Samuel Richard, a minor full-blood Creek Indian. R. 8, 39. It was executed April 13, 1912, on behalf of the minor by his father and guardian, Eastman Richard. R. 11, 16. It was approved by the court having jurisdiction of the estate of the minor (R. 9, 39),

and June 8, 1912, it was approved by the Secretary of the Interior. R. 17. The allottee died January 24, 1916, leaving as his sole heir at law his father, Eastman Richard, also a full-blood Creek Indian. R. 9, 40. The fund in controversy, amounting to $216,154.16 at the time of filing the petition, consists of royalties accruing under the lease, the greater portion prior to the death of the allottee, which were received by the appellants pursuant to the terms of the lease, and are held by them in their official capacity. R. 5, 9, 40.

The appellees, as administrators of the estate of the deceased allottee, sued the appellants, as Indian superintendent and Indian cashier, to compel them to pay over this fund and to enjoin the further collection of royalties, claiming that the death of the allottee terminated the jurisdiction of the Secretary of the Interior over the lease and its proceeds. R. 4, petition, par. viii. The appellants claim the right to hold the fund already accumulated and to collect future royalties for use and disposition according to law and the rules and regulations of the Secretary of the Interior for the benefit of the full-blood heir of the deceased allottee. R. 10, answer, par. v.

The District Court ruled that so long as the allotment remained subject to restriction on alienation, as it did in the hands of a full-blood Indian heir under the act of May 27, 1908, 35 Stat. 312, the proceeds of the oil and gas lease remained subject to the regulations of the Secretary of the Interior

made during the life of the allottee. R. 34, 35-36. The petition was therefore dismissed. R. 36.

The Court of Appeals to the contrary ruled, Stone, C. J., dissenting, that the jurisdiction of the Secretary of the Interior over the proceeds of the lease was taken away by section 9 of the act of May 27, 1908, 35 Stat. 315, which authorized a conveyance of the allotment by the full-blood Indian heir with the approval of the probate court. R. 45. The relief prayed for was therefore granted. R. 47.

QUESTION PRESENTED.

The various errors alleged in the assignment (R. 48) may be resolved into one proposition, viz:

The oil and gas lease on the allotment of the full-blood Creek Indian, Samuel Richard, and the proceeds of such lease remain subject to the rules and regulations of the Secretary of the Interior after the death of the allottee and descent of the land to Eastman Richard, a full-blood Indian.

ARGUMENT.

The oil and gas lease in question was executed, as shown in its preamble (R. 12), "under and in pursuance of the provisions of the act of Congress approved May 27, 1908," 35 Stat. 312. Section 2 of that act provides:

> That leases of restricted lands for oil, gas, or other mining purposes * * * may be made, with the approval of the Secretary of the Interior, under rules and regulations pro-

vided by the Secretary of the Interior, and not otherwise.[1]

The applicable regulations are found in a pamphlet published by the Interior Department, entitled "Regulations Governing Leasing of Lands and Removal of Restrictions of Members of the Five Civilized Tribes, Reprinted June 1, 1916." In conformity to section 20 of these regulations adopted April 20, 1908 (p. 10),[2] this lease provided (R. 12) for payment

[1] The entire section reads as follows:

"SEC. 2. That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult, or by guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years, without the privilege of renewal: *Provided*, That leases of restricted lands for oil, gas, or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for periods of more than five years may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior and not otherwise: *And provided further*, That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions, and the term minor or minors, as used in this act, shall include all males under the age of twenty-one years and all females under the age of eighteen years."

[2] All royalties, rents, or payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to the United States Indian agent at Union Agency, Muskogee, Okla., or to such other person as may be designated by the Secretary of the Interior, for the benefit of the various lessors, or, in cases of minors and incompetents, shall be deposited as hereinafter specified. (See amendment of July 23, 1910, as to minors and incompetents, p. 31.) No royalties on such leases shall be paid by the lessee direct to the lessors or their representatives.

of the oil and gas royalties agreed on "to the United States Indian superintendent, Union Agency, Muskogee, Oklahoma, for the lessor." Section 25 of the regulations, as amended July 23, 1910 (p. 31)[1] and November 29, 1912 (p. 38),[2] provides for discretionary use of the funds derived from leases on restricted Indian lands for the benefit of the Indians to whom they belong. These regulations were made part of the lease in question by paragraph 8 thereof, which provides (R. 15) that:

> This lease shall be subject to the regulations of the Secretary of the Interior, now or

[1] All royalties, rents or payments accruing under any lease made for or on behalf of any minor or incompetent shall be held by the United States Indian superintendent, Union Agency, or such other disbursing officer as may be designated by the Secretary of the Interior, to the credit of the guardian (or curator) of such minor or incompetent and shall be paid to such guardian (or curator) upon voucher executed by him and approved by the judge of the county (probate) court having jurisdiction of the estate of such minor or incompetent (the form of such voucher to be prescribed by the Department), or upon authority of such court in the form of an order satisfactory to said superintendent or other officer in charge of the Union Agency.

[2] *Provided, however*, That the said superintendent, or other officer in charge of the Union Agency, is authorized, in his discretion, where considered for the best interests of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents, or payments accruing under any lease have been paid to said superintendent, to withhold the disbursement of such royalties, rents or payments, wholly or in part from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs.

> hereafter in force, relative to such leases, all of which regulations are made a part and conditions of this lease.

The lease in question and the regulations fully recognize the termination of the Secretary's jurisdiction over leases and their proceeds upon the removal of restrictions on alienation of the land. In conformity to section 42–d of the Regulations (p. 19),[1] paragraph 12 of the lease provided (R. 15):

> In event restriction on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement, from the day such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior as herein provided shall cease and all payments required to be made to the United States Indian superintendent shall thereafter be made to lessor or the then owner

[1] In event restrictions are removed from a part of the land included in a lease for oil, gas, or other mineral purposes, the entire lease shall continue subject to approval and supervision of the Secretary of the Interior, and all royalties thereunder shall be paid to the Indian agent until such time as the lessor and lessee shall furnish the Secretary of the Interior satisfactory information that adequate arrangements have been made to account for the oil, gas, or mineral upon the restricted land separately from that upon the unrestricted. Thereafter the restricted land only shall be subject to the supervision of the Secretary of the Interior, provided that the unrestricted portion shall be relieved from such supervision as in the lease or regulations provided.

> of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufala National Bank, of Eufala, Oklahoma, or at such other place as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease.

The decision of the Court of Appeals is founded upon the following provision of section 9 of the act of May 27, 1908, 35 Stat. 315:

> That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee.

The land does not by virtue of this provision cease to be "restricted land" on the death of the allottee where it descends to a full-blood Indian heir. The term "restricted lands," as used in the provision of section 2 forbidding oil and gas leases on such lands except "under rules and regulations provided by the Secretary of the Interior," obviously means lands not subject to the unrestricted power of alienation. A power of alienation which is subject to judicial approval certainly is restricted. Section 22 of the act of April 26, 1906, 34 Stat. 145, contains a provision exactly the same in effect as that of section 9 of the

act of 1908 above quoted, except that conveyances of full-blood Indian heirs are there made subject to approval by the Secretary of the Interior, and that provision has been regarded by this court as a "restriction" on the land.

In *Tiger* v. *Western Investment Co.*, 221 U. S. 286, 308, construing the provision of 1906, reference was made to the similar one of 1908 as showing "that, in the understanding of Congress at least, *restrictions* still existed so far as the inherited lands of full-blood Indians were concerned." And the court held that "it was within the power of Congress to continue to *restrict alienation* by requiring, as to full-blood Indians, the consent of the Secretary of the Interior to a proposed alienation of lands," and "to vary its *restrictions* upon alienation of Indian lands in the promotion of what it deems the best interest of the Indian." P. 316.

In *Brader* v. *James*, 246 U. S. 88, 95, it was said that the act of 1906 was intended "to make requirements as to conveyances by full-blood Indians and the full-blood heirs of Indians, which should take the place of former *restrictions* and limitations." It was also said with particular reference to the provision for approval of conveyances by full-blood Indian heirs, that this legislation was "enacted in discharge of the Nation's duty of guardianship over the Indians." pp. 95–96. See also *Talley* v. *Burgess*, 246 U. S. 104, 107.

The decisions in these cases were followed in a case involving the similar provision of the act of 1908. *Sunday* v. *Mallory*, No. 100, decided January 7, 1919.

In *Heckman* v. *United States*, 224 U. S. 413, 436, referring to the acts of 1906 and 1908, the court said:

> These restrictions evinced the continuance, to this extent at least, of the guardianship which the United States had exercised from the beginning.

In *Marcy* v. *Board of Com'rs*, 45 Okla. 1, 7, the Supreme Court of Oklahoma decided that inherited lands of full-blood Indian heirs under section 9 of the Act of 1908 were subject to the "supervision and control of a federal agency" and therefore "restricted lands" not subject to state taxation.

It is settled by these decisions that allotted lands inherited by full-blood heirs, requiring judicial approval for their conveyance under section 9 of the act of 1908, are "restricted lands," within the requirement of section 2 that such lands can not be leased for oil and gas purposes except "under rules and regulations provided by the Secretary of the Interior." It is also the doctrine of these decisions that so long as Indian lands are restricted, the guardianship of the United States continues. But to sustain the decision of the Court of Appeals in this case would terminate this guardianship and defeat this long-established governmental policy. The obvious purpose of the authority to make rules and regulations respecting the proceeds of oil and gas leases was to protect the full-blood Indians

against their own improvidence. But if the administrators in this case, of which Eastman Richard, the full-blood heir, is one, can recover such proceeds from the Government officers, a quarter of a million dollars in this case and millions of dollars in other cases will have to be turned over to improvident full-blood Indians.

It is said that the restriction may be removed by action of the probate court without reference to the Secretary of the Interior. This may be so, but such action can only be taken by approving a conveyance of the land. It is suggested that a mining lease is to that extent a conveyance of the land, and that if this lease were surrendered or cancelled, as it might be according to its provisions (R. 15, secs. 7, 9), another could be made with the approval of the court. It is true that such a lease would be regarded as a conveyance of an estate in the land at common law. *Eldred* v. *Okmulgee Loan & Trust Co.*, 22 Okla. 742, 746. But Congress was not dealing with estates at common law. It was dealing in one part of the act with conveyances of restricted lands and in another part with leases of such lands. The former were authorized by approval of the probate court, the latter by approval of the Secretary of the Interior under regulations prescribed by him, "and not otherwise." That Congress had in mind a definite distinction between the powers of the Secretary and the powers of the court, and that in case of conflict the powers of the Secretary should be exclusive, is shown by the provision immediately following the

leasing power of the Secretary in section 2, as follows:

> That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions.

We do not mean to contend that the word "incompetents" as here used necessarily was intended to include all adult full-blood Indians, although the national guardianship was continued over them because of their notorious incompetency as a class. But as it is obvious that the words "minors and incompetents" may include full-blood Indian heirs, it follows that the probate courts are forbidden to approve mining leases on the restricted lands of such heirs. In other words, whether the present appellee, Eastman Richard, is an incompetent or not because he is a full-blood Indian, it is certain that if he were a minor the probate court would have no power to approve an oil and gas lease of his inherited land. In the provision of section 9 of the act of 1908 no distinction is made between minor full-blood and adult full-blood Indians. In the governmental policy of protecting the Indians there is no reason for a distinction between minor mixed-blood and adult full-blood Indians. But that policy furnishes ample reason for giving the Secretary of the Interior exclusive authority over mining leases on the restricted lands of both classes. The authority of the probate courts of Oklahoma in all cases of Indians still under Federal guardianship is that of a Federal agency, subordinate

to the paramount authority of the United States. The Supreme Court of Oklahoma has so decided with respect to the authority of those courts to approve conveyances by full-blood Indian heirs under section 9 of the act of 1908. *Marcy* v. *Board of Com'rs*, 45 Okla. 1, 7. To the same effect is the decision of this court in *Truskett* v. *Closser*, 236 U. S. 223, 227.

CONCLUSION.

It is respectfully submitted that the decrees of the Circuit Court of Appeals in both cases should be reversed, that the decree of the District Court in No. 563 should be reversed, and that the decree of the District Court in No. 313 should be affirmed.

FRANCIS J. KEARFUL,
Assistant Attorney General.

MARCH, 1919.

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Nos. 313 and 563.

In the

Supreme Court of the United States.

October Term, 1918.

GABE E. PARKER and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER and W. M. BAKER as Cashier for the Five Civilized Tribes, - - - - - *Appellants,*

VERSUS

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, - - - - - - - *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF OF APPELLEES.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

Nos. 313 and 563.

GABE E. PARKER and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER and W. M. BAKER as Cashier for the Five Civilized Tribes, - - - - - *Appellants,*

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APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1918.

Nos. 313 and 563.

GABE E. PARKER and GABE E. PARKER as Superintendent for the Five Civilized Tribes, W. M. BAKER and W. M. BAKER as Cashier for the Five Civilized Tribes, - - - - - *Appellants,*

vs.

EASTMAN RICHARD and R. D. MARTIN, Co-Administrators of the Estate of SAMUEL RICHARD, Deceased, - - - - - - - *Appellees.*

APPEAL FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

BRIEF *of* APPELLEES.

Statement of the Case.

Samuel Richard was, during his lifetime, a full-blood citizen of the Creek Nation of the Five Civilized Tribes of Indians and as such citizen there was

duly patented to him by the Creek Nation 160 acres of land described as the

> Southwest Quarter of Section Four (4), Township Seventeen (17) North, Range Seven (7) East, located in Creek County, State of Oklahoma.

On April 13, 1912, Samuel Richard being then a minor, acting through his legal guardian, made, executed and delivered an oil and gas mining lease covering the above described lands to the Kathleen Oil Co. as lessee. The lease was duly approved by the County Court having jurisdiction of said minor and also approved by the Secretary of the Interior, for the reason that Samuel Richard was a minor full-blood Creek Indian and his allotment of land was inalienable during his lifetime and a lease upon same during Samuel Richard's lifetime then required the approval of the Secretary of the Interior.

Under the terms of the lease it was provided that lessee should pay to the United States Indian Superintendent for the use and benefit of said lessor, as royalty, the sum of 12½% of the gross proceeds of sale of all crude oil extracted from the land, but it was further provided in the lease that in event restrictions on alienation should be removed from the land the lease shall be removed from the supervision of the Secretary of the Interior and that such release

would take effect without further agreement from the date the restrictions were removed and that thereupon the authority and power delegated to the Secretary of the Interior should cease, and further, that all payments required to be paid to the United States Indian Superintendent, should thereafter be made to the lessor, or the then owner of the lands.

The lessees entered in and upon the lands, drilled for oil and found same in large paying quantities and during the lifetime of Samuel Richard paid royalty moneys amounting to approximately $175,818.67 to the United States Indian Superintendent for the use and benefit of said Samuel Richard.

Thereafter on January 24, 1916, the allottee, Samuel Richard, died, leaving his father, Eastman Richard, as his sole heir. Thereafter Eastman Richard, the heir of Samuel Richard, petitioned the County Court of McIntosh County, Oklahoma, for the appointment of himself and R. D. Martin as co-administrators of the estate of Samuel Richard, deceased, and thereafter on February 29, 1916, plaintiffs, Eastman Richard and R. D. Martin, were appointed as such administrators by said County Court; they executed and delivered their joint and several administrator's bond, according to law, in the penal sum of $225,000.00 to faithfully discharge their duties as such administrators, and said bond was duly approved by said County Court and letters of adminis-

tration were duly and legally issued to plaintiffs as administrators of the estate of Samuel Richard, deceased. (Rec., p. 6.)

Thereafter on March 1, 1916, Eastman Richard as sole heir of Samuel Richard, and plaintiffs as administrators of said estate of Samuel Richard, deceased, by and with consent of the lessee and owner of said lease, revoked, renounced, cancelled and terminated the appointment of said defendants as trustees under said lease to further collect royalties accruing from said lands and notified said defendants thereof and requested the defendants to pay to plaintiffs the moneys collected by them from said lease both prior to the death of Samuel Richard as well as the moneys collected since the death of Samuel Richard on January 24, 1916, up to said March 1, 1916, but the defendants declined to do so.

The plaintiffs claimed that upon the death of the allottee, Samuel Richard, on January 24, 1916, that the restrictions against alienation of said lands ceased; that Eastman Richard as heir of Samuel Richard has the legal right to alienate said inherited lands without approval of the Secretary of the Interior; and that the right of the Secretary to supervise the lease ceased and the right of the defendants to withold moneys representing proceeds of sale of oil extracted from the land also ceased after the death of Samuel Richard, and that plaintiffs, as such ad-

ministrators of said estate, are entitled to collect said moneys for the use and benefit of Samuel Richard's heir, Eastman Richard. Plaintiffs thereupon filed this suit in the District Court of Muskogee County, State of Oklahoma, seeking to collect from the defendants the moneys belonging to the estate of Samuel Richard, deceased, which the defendants collected prior to the death of Samuel Richard in the approximate sum of $175,818.67, and also seeking to collect for said estate the moneys collected by the defendants after the death of Samuel Richard and prior to the institution of this suit, in the approximate sum of $50,000.00, and also seeking to enjoin the defendants from interfering with the collection by plaintiffs of the moneys accumulated since the institution of this action and moneys that will continue to accumulate from the sale of oil extracted from the land since the death of Samuel Richard, and also seeking to require the defendants to render to plaintiffs an accounting of all such moneys collected. (Rec. pp. 1-7.)

Thereafter the defendants removed said cause to the United States District Court for the Eastern District of Oklahoma and on August 30, 1916, filed their answer admitting all the material facts alleged by plaintiffs, but denied, as a matter of law, that the death of Samuel Richard removed restrictions against alienation of the land and denied that the de-

fendants had no lawful right to withhold the moneys collected by them prior to the death of Samuel Richard and also denied that the defendants had and have no lawful right to continue to collect the royalty moneys representing sale of oil extracted from this land, since the death of Samuel Richard. (Rec., pp. 8-31.)

Thereafter the case was submitted to the District Court and the District Judge rendered his opinion and filed same on September 14, 1916, (Rec., pp. 32-36), and on September 21, 1916, made and entered a decree in favor of the defendants and against the plaintiffs, to all of which plaintiffs duly excepted. (Rec., pp. 37-38.)

Thereafter the plaintiffs appealed to the United States Circuit Court of Appeals of the Eighth Judicial Circuit, from the judgment of the District Court. (Rec., pp. 38-42.)

Thereafter, the case was duly submitted, argued and considered in the said Circuit Court of Appeals and on August 21, 1917, the Circuit Court reversed the judgment of the District Court, and filed its opinion in the case (Rec., pp. 43-46) and on Sept. 3, 1917, entered its decree reversing the judgment of the District Court, and ordered the same remanded to the said District Court, with directions to enter a decree for complainant. (Rec., p. 47.)

From the judgment and decree of the Circuit Court of Appeals the defendants appealed to this court, as is shown by the record in case No. 313.

Thereafter on the 28th day of Feb., 1918, as directed by the decree of the Circuit Court of Appeals, the United States District Court at Muskogee made and entered its decree and judgment in favor of the complainants, and against the defendants, directing the defendants to pay to the plaintiffs $119,621.32 in money and to deliver to them $162,000.00 in Liberty Bonds and to account to them for all other notes and mortgages and etc., received and collected from the Samuel Richard allotment and enjoining them from thereafter supervising or controlling same, or receiving money from the sale of oil extracted therefrom. (Rec., p. 37. No. 563.)

From this judgment and decree the defendants again appealed to the Circuit Court of Appeals (Rec., p., 40, No. 563) and thereafter on May 20, 1918, the plaintiffs filed their motion to dismiss said second appeal in the Circuit Court of Appeals, which, after being heard by said Court and thereafter on May 28, 1918, the said Circuit Court of Appeals, after the filing of defendant's response (Rec., p. 51, No. 563), and the hearing of the argument thereon, did, dismiss the said second appeal (Rec., p. 54, No. 563), from which order of the said Circuit Court of Ap-

peals, the defendants again appealed to this court, which is case No. 563.

The appeals from the District Court to the Circuit Court of Appeals and from the Circuit Court of Appeals to this court, as shown in the record of case No. 563, were taken by the defendants for the only purpose of delaying plaintiffs from securing possession of the funds and benefits of the judgment rendered in their favor, hence the determination of these cases depends upon the record of case No. 313, to which record reference will be made in the argument on the legal questions involved.

ARGUMENT.

May It Please the Court:

I.

Upon the death of Samuel Richard on January 24, 1916, all restrictions against alienation of the lands constituting his allotment were removed.

II.

The amendment to Rule 25 promulgated November 29, 1912, after the execution of the lease,

was and is unenforceable as against the lessor and his heirs, because the amended rule attempts to change the terms of the lease contract.

III.

Upon the death of Samuel Richard on January 24, 1916, all governmental supervision over the lease on his allotment of land ceased, even tho', as a matter of law, all restrictions as to alienation are not removed.

So far as we have been able to learn, the questions involved in this case have never before been directly presented to, nor passed upon, by this court, and the issues herein involved are now for the first time presented here for a determination.

I.

Repeating our First Proposition:

We think that upon the death of Samuel Richard on January 24, 1916, all restrictions against alienation of the lands constituting his allotment were removed.

Before the lands were allotted to the Indians of the Five Civilized Tribes a Treaty was entered into known as the Original Creek Treaty (31 Stat. L. 861)

which was approved March 1, 1901. It was then the intention of all parties, in providing for the protection of the Indian, that the individual allotments made to the living allottees should remain inalienable for at least five years. It was therefore provided in the treaty as follows:

Sec. 7 of Act of March 1, 1901 (31 Stat. at L. 861):

> "Lands allotted to citizens hereunder shall not in any manner whatsoever, at any time, be incumbered, taken or sold to secure or satisfy any debt or obligation contracted or incurred prior to the date of the deed to the allottee therefor, and such lands *shall not be alienable by the allottee or his heirs at any time before the expiration of five years from the ratification of this agreement, except with the approval of the Secretary of the Interior.*"

This provision was reenacted, of course, in the Supplemental Creek Treaty (32 Stat. L. 500), effective August 8, 1902, by Section 16 thereof which reads as follows:

> "Lands allotted to citizens shall not in any manner whatever, or at any time be encumbered, taken or sold, to secure or satisfy any debt or obligation nor be *alienated by the allottee or his heirs before the expiration of five years from the date of the approval of this supplemental agreement, except with the approval of the Secretary of the Interior.*"

By this legislation each enrolled Indian of the Creek Nation of the Five Civilized Tribes received his allotment of land which was not alienable under the terms of these treaties for five years, both while the lands were owned by the allottee or his heirs, when the allottee received his allotment during his lifetime. These restrictions against alienation then applied to all allottees including Indians of every degree of blood as well as freedmen allottees, and also applied to the heirs for the full five-year period commencing with August 8, 1902. Even at that time however there was a class of these allotted lands which Congress even then deemed it wise to permit be alienable by some of the Indians of the Five Civilized Tribes; that is all allotments of citizens of said tribe who were living April 1, 1899 and entitled to be enrolled but who died since that time before receiving their allotments. Such allotments of lands were patented to the *heirs* of such deceased allottee and were granted to such Indian heirs *free of all restrictions* as provided in Section 28 of the Original Creek Treaty, approved March 1, 1901, *supra.* Section 28 is as follows:

> "*Sec. 28* * * * All citizens who were living on the first day of April, eighteen hundred and ninety-nine, entitled to be enrolled under section twenty-one of the Act of Congress approved June twenty-eighth, eighteen hundred and ninety-eight, entitled 'An act for the protection of the

people of the Indian Territory, and for other purposes,' shall be placed upon the rolls to be made by said Commission under said Act of Congress, and if any such citizen has died since that time, or may hereafter die, before receiving his allotment of lands and distributive share of all the funds of the tribe, the lands and money to which he would be entitled, if living, shall descend to his heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly.

"All children born to citizens so entitled to enrollment, up to and including the first day of July, nineteen hundred, and then living shall be placed on the rolls made by said Commission; and if any such child die after said date, the lands and moneys to which it would be entitled, if living, shall descend to its heirs according to the laws of descent and distribution of the Creek Nation, and be allotted and distributed to them accordingly."

See also:

Rentie v. *McCoy*, 128 Pac. 244;

Mullen v. *U. S.* 224 U. S. 448, 56 L. ed. 834;

Welty v. *Reed*, 231 Fed. 930.

As the Indian Territory became more inhabited and settled, and as Indian allottees became more accustomed to living and transacting business in the same manner as the other citizens of this country did who were not members of the Five Civilized Tribes, but who were their neighbors and business

associates, Congress realized and then decided it was wise to release another class of these then restricted Indian citizens of the Five Civilized Tribes from this binding provision of the treaty which prevented alienation of their lands and therefore passed a law removing all restrictions on alienation on all of the surplus allotments of lands of adult allottees of the Five Civilized Tribes, who were not of Indian blood. This provision removing restrictions against alienating surplus allotments of certain classes of allottees of the Five Civilized Tribes was inserted in the Indian Appropriation Act (33 Stat. L. 189) and approved April 21, 1904, and reads as follows:

> "*And all the restrictions upon the alienation of lands of all allottees of either of the Five Civilized Tribes of Indians who are not of Indian blood, except minors, are, except as to homesteads, hereby removed,* and all restrictions upon the alienation of all other allottees of said tribes, except minors, and except as to homesteads, may, with the approval of the Secretary of the Interior, be removed under such rules and regulations as the Secretary of the Interior may prescribe, upon application to the United States Indian Agent at the Union Agency in charge of the Five Civilized Tribes if said agent is satisfied upon a full investigation of each individual case, that such removal of restrictions is for the best interest of said allottee."

This removed restrictions against alienation of surplus lands of all adult allottees of the classes named both while owned by the living allottee as well as his heirs. It will be noted that this removal of restrictions was made by Congress less than two years after the passage of the Supplemental Creek Treaty and more than three years before the five-year period of restrictions against alienation, as provided for in the Supplemental Creek Treaty, would have expired.

Later Congress, still pursuing its wise policy of removing restrictions against alienation of allotted lands step by step, and only two years after the passage of the 1904 act, *supra*, then in April, 1906, realizing the rapid growth of civilization and development made in this country by the Indians, again passed another law which removed all restrictions on all lands of all allottees immediately upon the death of any allottee of the Five Civilized Tribes, but specified a mode of conveyance in the sale of such inherited lands if any heir of such deceased allottee be a full blood; that is that his conveyance should be approved by the Secretary of the Interior. That portion of the Act of 1906 (34 Stat. L. 137), is as follows (Sec. 22):

> "That the adult heir of any deceased Indian of either of the Five Civilized Tribes whose selection has been made, or to whom a deed or

patent has been issued for his or her share of the land of the tribe to which he or she belongs or belonged, may sell and convey the lands inherited from such decedent; and if there be both adult and minor heirs of such decedent, then such minors may join in a sale of such lands by a guardian duly appointed by the proper United States Court for the Indian Territory. And in case of the organization of a state or territory, then by a proper court of the county in which said minor or minors may reside or in which said real estate is situated, upon an order of such court made upon petition filed by guardian. All conveyances made under this provision by heirs who are full blood Indians are to be subject to the approval of the Secretary of the Interior, under such rules and regulations as he may prescribe."

It will be observed that this in effect provided that upon the death of the allottee *all restrictions* as to alienation were removed, and that heirs of deceased allottees were given the right to alienate. The heirs of full-blood degree could also sell their inherited lands, but a mode or manner was specified by which their conveyance should be executed, by specifying that when such sale be made their conveyance should be approved by the Secretary of the Interior.

This clearly shows the intent of Congress to gradually remove restrictions against alienation on certain classes of Indians as rapidly as conditions in this country justified.

The development and settlement of this country became so rapid in advancement that conditions justified the granting of statehood to the inhabitants of Indian Territory, and we were admitted as a state to the Union on November 16, 1907.

After the citizens of this country had enjoyed the rights and privileges of statehood and after State Government had been in full sway for less than two years, Congress still pursuing its wise policy of removing restrictions from lands of these Indian citizens, then not only removed all restrictions against alienation of lands of the major portion of the remaining restricted Indian citizens by removing *all* restrictions, on all lands of allottees, enrolled as intermarried whites, and freedmen, as well as lands of *all* Indians having less than one-half degree of Indian blood, but also removed all restrictions on all surplus lands of allottees of mixed-blood Indians of one-half or more, and less than three-quarter blood.

Paragraph 1 of Act of May 27, 1908 (35 Stat. L. 312), is as follows:

> "*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That from and after sixty days from the date of this act the status of the lands allotted heretofore or hereafter to allottees of the Five Civilized Tribes shall, as regards restrictions on alienation or incumbrance, be as follows: All lands, including homesteads

of said allottees enrolled as intermarried whites, as freedmen, and as mixed Indian blood having less than half Indian blood including minors shall be free from all restrictions. All lands, except homesteads, of said allottees, enrolled as mixed-blood Indians having half or more than half and less than three-quarter Indian blood *shall* be free from all restrictions. * * *."

In addition to this, realizing all restrictions had been removed on the death of the allottee by Sec. 22 of Act of April 26, 1906, and in order to place supervision over the conveyances of Indian heirs of full bloods with the local government, Congress also inserted in Act of May 27, 1908, Sec. 9, providing that conveyances of Indian heirs of full blood (which theretofore were subject to approval by the Secretary of the Interior) could thereafter be approved by the State Courts.

Sec. 9 of Act of May 27, 1908 (35 Stat. L. 312), reads:

Sec. 9. "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: Provided, That no conveyance of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee."

This had the effect of *rescinding all supervision of the Secretary of the Interior or of any United*

States Government official over this class of conveyances, and designated that the state courts, to-wit: County Courts, should superintend conveyances of such class of lands.

Under the provisions of Sec. 9 of this act immediately upon the death of the allottee, his heirs, even though they were of full Indian blood, could and can now, sell the lands so inherited by them, free of all supervision or control of the Secretary of the Interior. Under the provisions of this act, the Secretary has no further jurisdiction after the allottee's death. Immediately upon the allottee's death all authority of the Secretary of the Interior over this class of lands ceased.

The foregoing legislation shows a comprehensive and consistent policy on the part of Congress to gradually remove the restrictions on alienation of allotted lands, and to give the Indian citizens the same rights and privileges as enjoyed by other citizens in the State of Oklahoma, by relieving these Indian citizens from the burden of federal jurisdiction, as rapidly as conditions justified.

Not only were restrictions removed from lands inherited by full-blood Indian citizens by these acts (*Hope* v. *Foley*, 157 Pac. 770; *Sampson* v. *Staples*, 155 Pac. 213), but the plain intent of Congress that this should be done is evident by this series of legis-

lation which gradually removed restrictions step by step.

Besides this it was generally understood by the Secretary of the Interior and federal officials in charge of the supervision of the Five Civilized Tribes that all federal supervision and control over this class of lands (to-wit, lands inherited by Indians of full blood upon death of their ancestors) was abrogated or rescinded by Act of May 27, 1908, *supra.*

Immediately after the passage of the Act of May 27, 1908, *supra,* the Secretary of the Interior on June 20, 1908, re-promulgated rules and regulations to govern leasing and sale of lands of all classes of restricted Indians, *but made no rule or regulation whatever applying to lands inherited by full-blood Indians upon the death of the allottee, because it was considered that Sec. 9 of Act of 1908, removed all restrictions so far as supervision of the Secretary was concerned immediately upon the allottee's death.* In fact the Secretary of the Interior in re-promulgating these rules and regulations, on June 20, 1908, to conform to the new provisions contained in Act of 1908, made specific rules and regulations for releasing all governmental supervision over leased lands from which restrictions were removed by the terms of the act. (See rule 42 C. on page 18 of Rules and Regulations adopted by the Secretary of the Interior, reprint of June 1, 1916.)

The Act of 1908, in Sec. 1, removed all restrictions against alienation of lands of minor Indian allottees, of less than half degree of blood, but also in section 2 provided that lands of minor allottees are subject to the jurisdiction of the Probate Courts of Oklahoma, until the minor, if a male, becomes 21 years of age, if a female, 18 years of age, according to the Enrollment Records. This Act of 1908 in Sec. 9 removed all restrictions against alienation of allotted lands, upon the death of the allottee, and provided that conveyances of heirs of full blood shall be approved by the County Courts of Oklahoma. In other words, all the restrictions against alienation of lands of minor Indian allottees of less than half degree of blood were removed, as was also all restrictions against alienation of lands inherited by full bloods removed, but in each instance jurisdiction was granted to the County Courts to approve the conveyances.

The lands of these classes of minors are not "*restricted*" lands. They are alienable. So also are lands inherited by full-blood Indians alienable.

The Secretary of the Interior has no power to supervise a sale or lease of lands of these minors. It is granted to the County Court. The Secretary of the Interior has no authority to supervise the sale or leasing of lands inherited by full-blood Indians, this is granted to the County Court. The Secretary of the

Interior or United States Indian Agent has no authority to collect or withhold from this class of unrestricted minors, moneys derived from sale of oil extracted from these lands, even though the lands were leased before the removal of the restrictions. Neither has he authority after the death of the allottee to collect or withhold moneys collected from sale of oil extracted from lands leased by full-blood Indians before the death of the allottee. Under Sec. 1 of Act of 1908 restrictions were removed from the class of minor lands named. Under Sec. 9 of Act of 1908 the restrictions were removed from the lands upon the death of the allottee, even though the heir is a full blood. In either case the County Court is charged with the jurisdiction, although the restrictions are removed from both classes of land. *In neither case has the Secretary of the Interior or the United States Indian Agent any further jurisdiction.*

At the time the lease covering the allotment in question was executed by Samuel Richard, by his legal guardian, on April 12, 1912, upon a departmental form of lease, the law giving the Secretary of the Interior power to approve leases for oil and gas purposes, executed by living full-blood Indians, was contained in Act of Congress, May 27, 1908, *supra.*

Prior to May 27, 1908, the authority given to the Secretary of the Interior to approve such leases was

contained in the Supplemental Creek Treaty, as follows:

Sec. 17 of Act of Congress, approved June 30, 1902 (32 Stat. L. 500):

> "Creek citizens may rent their allotments, for strictly non-mineral purposes, for a term not to exceed one year for grazing purposes only and for a period not to exceed five years for agricultural purposes, but without any stipulation or obligation to renew the same. Such leases for a period longer than five years for agricultural purposes, and *leases for mineral purposes*, may also be made with the approval of the Secretary of the Interior, and not otherwise. Any agreement or lease of any kind or character violative of this paragraph shall be absolutely void and not susceptible of ratification in any manner, and no rule of estoppel shall ever prevent the assertion of its invalidity."

Sec. 2 of Act of Congress, May 27, 1908 (35 Stat. L. 312):

> "*Sec. 2.* That all lands other than homesteads allotted to members of the Five Civilized Tribes from which restrictions have not been removed may be leased by the allottee if an adult; or by the guardian or curator under order of the proper probate court if a minor or incompetent, for a period not to exceed five years without the privilege of renewal; PROVIDED, *That leases of restricted lands for oil, gas or other mining purposes, leases of restricted homesteads for more than one year, and leases of restricted lands for*

periods of more than five years, may be made, with the approval of the Secretary of the Interior and not otherwise; AND PROVIDED FURTHER, That the jurisdiction of the probate courts of the State of Oklahoma over lands of minors and incompetents shall be subject to the foregoing provisions and the term minor, or minors, as used in this act, shall include all males under the age of twenty-one years, and all females under the age of eighteen years."

It will be observed that under these provisions of law that the Secretary of Interior was given the power and authority to approve leases for oil and gas mining purposes on lands of living full-blood allottees, and the lease executed by Samuel Richard, during his lifetime on April 12, 1912, provided among other things as follows:

(Paragraph 2.) "The lessee hereby agrees to pay or cause to be paid to the United States Indian Superintendent, Union Agency, Muskogee, Oklahoma, *for the lessor,* as royalty, the sum of 12½% of the gross proceeds of all crude oil extracted from the said land, such payment to be made at the time of sale or removal of the oil."

(Paragraph 8.) "This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease: *Provided, however,* that no regulations made after the approval of this lease, affecting either the length of term

of oil and gas leases, the rates of royalty or payment thereunder, or the assignment of leases, shall operate to affect the terms and conditions of this lease."

(Paragraph 12.) *"In event restrictions on alienation shall be removed from all the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement,* from the date such restrictions are removed, and thereupon the authority and power delegated to the Secretary of the Interior shall cease, and all payments required to be made to the United States Indian Superintendent shall thereafter be made to lessor or the then owner of said lands in person or be deposited to the credit of said lessor or his assigns at the Eufaula National Bank, of Eufaula, Oklahoma, or at such other places as the said lessor or his assigns may from time to time designate in writing, and changes in regulations thereafter made by the Secretary of the Interior applicable to oil and gas leases shall not apply to this lease."

It will be observed that under the terms of the Acts of Congress and the terms of the lease itself it was not contemplated that the Secretary of the Interior should execute the lease itself, but that he should approve the lease after it had been executed by the Indian, and that the rents and royalties accruing under the terms of the lease should be paid to the

United States Indian Superintendent at Muskogee, *for the lessor.* It was not contemplated that moneys arising from this lease should be paid to the lessor direct, but that same should be paid to the United States Indian Superintendent *for the lessor.* This was done in order that the United States Indian Superintendent could superintend the collection of the rents and royalties and see that the lessor received all moneys that became due under terms of this lease.

This is all that was contemplated. After the United States Indian Superintendent collected this money he had no authority to refuse to pay it to the Indian lessor. He was merely named in the lease as a depository where the royalties from the lease were to be paid for the lessor—the same as it is provided in Sec. 12 of the lease that "after restrictions are removed and supervision of the Secretary of the Interior over the lease is relinquished, that the royalties should be deposited to the credit of the lessor at the Eufaula National Bank at Eufaula, Oklahoma, etc."

In fact, the rules and regulations adopted by the Secretary of the Interior provided only for the collection of the money and re-deposit of same in name of the adult lessors, as per rule 20, and where the lessors are minors, as provided for in rule 25:

> "*20.* All royalties, rents, or payments due under leases which have been or may be approved by the Secretary of the Interior shall be paid to

the United States Indian Agent at Union Agency, Muskogee, Okla., or to such other person as may be designated by the Secretary of the Interior, for the benefit of the lessors, or, in cases of minors and incompetents, shall be deposited as hereinafter specified. (See amendment of July 23, 1910, as to minors and incompetents, p. 31.)"

"*25.* All royalties, rents, or payments accruing under any lease made for oil or on behalf of any minor or incompetent shall be deposited by the Indian agent or other Government officer, to whom paid, to the credit of the guardian or curator of such minor or incompetent, in some national bank or banks designated by the Commissioner of Indian Affairs, and may be withdrawn therefrom by such guardian or curator, with the consent of the United States Indian Agent, in sums not exceeding $50.00 per month unless otherwise ordered by the court. Sums in excess of $50.00 per month may be withdrawn on order of the proper court and not otherwise. Such designated banks shall furnish satisfactory surety bonds, to be approved by the Secretary of the Interior, guaranteeing the safe care and custody of the funds so deposited. (Amended July 23, 1910. See p. 31.) (Amended Nov. 29, 1912. See p. 38.)"

It will thus be observed that prior to the passage of the Act of May 27, 1908, the Secretary of the Interior promulgated general rules and regulations to govern leasing of restricted lands of Indian citizens and prescribed form therefor.

After the passage of Act of May 27, 1908, and on June 20, 1908, the Secretary of the Interior re-promulgated these rules with appropriate changes to conform to the provisions of the Act of May 27, 1908. These rules and regulations were adopted by him and printed in pamphlet form, but they contained no provision relative to leasing of inherited lands of full-blood heirs, for at that time the Department did not consider it had any jurisdiction whatsoever to supervise such leases.

On the other hand his rules made specific regulations for *relinquishing* supervision over leased lands from which restrictions were removed, as follows:

Paragraph 42-c of Rules and Regulations of Secretary of Interior, page 18:

> "*All leases executed and approved heretofore or hereafter on land from all of which restrictions against alienation have been or shall be removed, even if such leases contain provisions authorizing supervision by this Department shall after such removal of restrictions against alienation be operated entirely free from such supervision, and the authority and power delegated to the Secretary of the Interior in said leases shall cease, and all payments required to be made to the United States Indian Agent shall thereafter be made to lessor or the then owner of said land,* and changes in regulations thereafter made by the Secretary of the Interior ap-

plicable to oil and gas leases shall not apply to such leased land from which said restrictions are removed, except where a bond is required in said lease it shall be furnished with responsible surety, unless the giving of said bond is waived by lessor or the then owner of the land." (Amended Aug. 12, 1908.)

Amendment is as follows on page 30 of Rules and Regulations:

"ORDER OF AUGUST 12, 1908.

"The following provision has been adopted by the Department for the relinquishment of supervision of leases approved by the Secretary of the Interior on lands from which the restrictions have been removed:

'That under section 42 of the Revised Leasing regulations of April 20, 1908, in cases where the restrictions are removed where the Department is to relinquish supervision as provided in said section, the Indian Agent at Union Agency will notify the lessees that before such supervision is relinquished, unless a new bond is waived by the lessor or owner of the land, as the regulations authorize the lessees must furnish a bond running to the lessor, his heirs or assigns, in the same amount as originally required where such bond was made to the United States, and when such bond is filed with the Indian Agent, examined by him and the surety found to be satisfactory, it shall be forwarded to the lessor, his heirs or as-

signs, and both parties will thereupon be notified that the Department will not longer exercise supervision over the lease and the surety upon the original bond running to the United States will be notified that it will only be liable for such obligations as accrued prior to the date of the new bond'."

Complying with the intent of Congress in its enactment of Sec. 9 of Act of 1908, the Department relinquished all federal supervision or control over leasing or sale of lands inherited by full-blood Indian heirs.

Under these rules promulgated and adopted by the Secretary of the Interior, supervision was rapidly relinquished by the Department over a large number of leases where the lessor died, leaving full-blood heirs (exactly similar to this case). Interested parties were advised by the Department that the Department no longer exercised supervision over same. The royalties sent to the Indian Agent by the lessees were paid to the heirs or returned to the lessees with instructions "that they pay the same to parties entitled to receive them."

Acting under the plain provisions of the terms of Sec. 9 of the Act of May 27, 1908, *supra*, which removed all supervision on the part of the Secretary of the Interior, or on any other federal officers over leases or conveyances on lands inherited by Indians

of full blood, and acting further on the instructions given out by the Department to the various lessees, to the effect that the Department had no further supervision or control over such class of leases and lands, and also acting on the refusal of the Department to thereafter receive payment of rents or royalties accruing on leases after death of the lessor, even where the leases had been executed by allottees during their lifetime under the supervision of the Secretary of the Interior, thousands of leases have been taken in this country upon lands inherited by full-blood heirs since the passage of Act of May 27, 1908, and without supervision of the Secretary of the Interior, or any federal officer, and the bonuses paid for such leases, and the rents and royalties accruing from the sale of oil extracted from such lands covered by said leases, *have been paid direct to the full-blood Indian lessor.*

In this connection permit us to invite the court's attention to the last paragraph of the letter written by former Acting Indian Superintendent, R. S. Cate on page 84 of this brief, which we just received before sending this brief to the printer and which speaks for itself.

It has been held by decisions of both state and federal courts, that the Secretary of the Interior had no jurisdiction or control over such classes of leases, after the Act of May 27, 1908.

—*United States* v. *Knight*, 206 Fed. 145;

MaHarry v. *Eatman,* (Okla.) 116 Pac. 935;
Sampson v. *Staples,* 155 Pac. 213;
Nicholas v. *Cornelius,* 152 Pac. 831.

The court in its opinion in the *MaHarry* v. *Eatman* case, *supra,* says:

> "The approval of the Secretary of the Interior was not necessary to the validity of the deed of full-blood Indian heirs executed September 16, 1909, whose ancestor died August, 1901, the approval of the court having jurisdiction of the settlement of the ancestor's estate being all that is required by section 9, Act of May 27, 1908, c. 199, 35 Stat. 315."

In our case the County Court having jurisdiction of the settlement of the estate of Samuel Richard has taken jurisdiction over the land and estate of Samuel Richard and appointed the plaintiffs as administrators over this estate; the plaintiffs have qualified and given surety bond in the sum of $225,000.00 approved by the County Court, and we think the moneys held by the defendants should be turned over to the plaintiffs in order that the County Court may exercise its jurisdiction over this estate and make a decree of distribution of the estate to the heir or heirs lawfully entitled as contemplated by Congress. The defendants lost all jurisdiction upon the death of Samuel Richard. Thereafter the jurisdiction over the land and estate is charged upon the

County Court having jurisdiction of the settlement of the estate of the deceased allottee.

The power of supervision by the Secretary of the Interior granted him by section 22 of the Act of April 26, 1906, was cancelled and repealed by Sec. 9 of the Act of May 27, 1908. The Act of May 27, 1908, repealed Sec. 22 of the Act of 1906. See case of *Henley* v. *Davis*, (Okla.) 156 Pac. 337, in which the court says:

> "The Act of Congress approved May 27, 1908, * * * is a revising act and was intended as a substitute for all former acts relating to the subject of restrictions, and operated to repeal the provisions of an Act of Congress approved April 26, 1906, * * * and previous Congressional enactments in conflict therewith on the same subject."

In the case of *Hope* v. *Foley*, 157 Pac. 727, the Oklahoma Supreme Court says:

> "After the Act of May 27, 1908, became effective the Secretary of the Interior had no authority to approve conveyances of Indian lands of full-blood Indians."

We say *if the Secretary of the Interior has no authority to approve a sale of the lands, after the death of the allottee, that the Secretary of the Interior has no power to collect the moneys accruing from sale of oil extracted from the same land after the death of the allottee, and that therefore, the defend-*

ants are not entitled to hold the money sued for by plaintiffs in this action.

If Eastman Richard, as heir of Samuel Richard, can sell the entire fee in this land inherited by him and collect the purchase price therefor without sanction, supervision or approval of the Secretary of the Interior because the death of Samuel Richard operated to remove all departmental supervision over this land, Eastman Richard is entitled to collect the daily royalties accruing from the sale of oil extracted from the land since the death of Samuel Richard.

It is admitted by all parties that a lease or conveyance executed after Act of May 27, 1908, by an Indian of the Five Civilized Tribes, of the full blood, to lands inherited by him, may be executed by the Indian lessor without any supervision or control whatsoever of the Secretary of the Interior. The full-blood Indian heir collects the bonus for the lease. The rents and royalties accruing under the lease or purchase price for the sale of his land, as the case may be, are paid direct to the full-blood Indian heir, without any supervision. He collects these royalties the same as any other person owning leased land.

Thousands upon thousands of leases have been taken and executed covering inherited land by full-blood Indians with the approval of the County Court

having jurisdiction of the settlement of estate of the deceased allottee under the plain provision of Sec. 9 of Act of May 27, 1908, *supra,* and all moneys paid direct to the Indian lessor. Can it be consistently contended that because the Secretary of the Interior had supervision of this lease before the death of Samuel Richard, that he still retained lawful supervision ever after the death of the allottee? This certainly is an absurdity. Eastman Richard today, as the sole heir of Samuel Richard, although he be a full-blood, can sell the lands covered by the lease in question, and receive probably half a million dollars for the absolute fee simple title to the land in question, and all that is necessary is that his conveyance be approved by the County Court of McIntosh County, Oklahoma. The Secretary of the Interior need not approve his sale, nor can he prevent him from selling. If this can be done (and it is admitted that it can) without the supervision or control of the Secretary of the Interior who has neither the power nor the authority to prevent the Indian from leasing or selling his lands, can it be consistently claimed that the Secretary of the Interior can continue to collect the daily rents and royalties accruing from this land, and withhold the same from Eastman, the heir and owner? We think not!

After the passage of the Act of May 27, 1908, and after the lease on the lands in question had been

taken, the Secretary of the Interior amended Rule 25 of the rules and regulations by adopting the following rule on November 29, 1912 (quoting from page 38 of Rules and Regulations):

> "*Provided, however,* that the said superintendent, or other officer in charge of the Union Agency, is authorized in his discretion, where considered for the best interests of any adult, minor or incompetent lessor, or his or her heirs, for whose account royalties, rents or payments accruing under any lease have been paid to said superintendent to withhold the disbursement of such royalties, rents or payments, wholly or in part from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs."

It is claimed by the Department now, by reason of adoption of this rule, that the Department has the right now not only to withhold from the heirs of Samuel Richard the moneys which were collected under the lease by the Department prior to the death of Samuel Richard, but it is further claimed that the Department still has the right to continue to collect royalties accruing from the lands in question, at the present time, although Samuel Richard died in January, 1916. Even this claim was not made by the Department at the time it adopted the amended Rule in November, 1912, but this claim was for the first time

made by the Department in 1915—three years after its adoption.

No proper construction that can be given to this rule and regulation above quoted gives the Department any authority or jurisdiction to collect royalties accruing from leased lands after the death of the allottee. The amended rule does not even attempt to provide that after the death of the allottee that the Indian Superintendent can *continue to collect royalties.*

The entire fee in the land can be sold by the Indian heir and the purchase price in its entirety can be collected by the Indian heir without supervision or control of any government official. The Secretary of the Interior can neither say yea nor nay as to whether the heir can sell the land. He has no supervision or control over it whatsoever. This is admitted by all parties. Is it consistent to claim that although Eastman Richard has a right to sell the fee simple title to land in its entirety, and collect the purchase price of it (without the supervision of the Secretary of the Interior) that if he does not sell the fee in his land he cannot collect the rents and royalties daily accruing from the lands? And that the Secretary of the Interior can collect and hold same? We think not! This, we say again, is an absurdity.

The amendment to Rule 25 adopted November 29, 1912, by the Secretary of the Interior, does not authorize the United States Indian Superintendent to continue to collect royalties from this land AFTER the death of Samuel Richard, or to refuse to pay to the plaintiffs the money collected BEFORE the death of Samuel Richard, because section 9 of Act of May 27, 1908, operates to remove all restrictions against alienation of the land or at least rescinded all supervision over same by the Secretary of the Interior, and the Secretary of the Interior has no lawful power to adopt a rule or regulation giving him authority in excess of that prescribed by Acts of Congress; he cannot by a ruling make lands and moneys restricted which by Acts of Congress are free from restrictions. He cannot, by his own ruling give himself authority to supervise lands from which his supervision is rescinded by Act of Congress.

The rules and regulations adopted by the Secretary of the Interior can give to the Secretary of the Interior no authority or right to supervise leases except on those lands which are specifically restricted by the Acts of Congress, that is those lands which are *"inalienable"* by the Indian, until *"restrictions against alienation"* of the lands are removed by an *order of the Secretary of the Interior.*

In other words, the Secretary of the Interior has only the specific right to promulgate rules and

regulations to apply to leases on lands *which are restricted under the terms of the Acts of Congress.* Any rule or regulation that may be adopted by the Secretary of the Interior which attempts to give him authority to supervise or control leases on lands from which restrictions have been removed, or from which Government supervision has ceased is a nullity and void, and without any binding force whatever.

It was not the intention of Congress that lands inherited by Indians of full blood should be classed as restricted lands after passage of Act of May 27, 1908.

By an examination of Sec. 1 and Sec. 9 of Act of May 27, 1908, it will be noted that it was the intention of Congress by the enactment of this act to remove restrictions from the major portion of lands of the members of the Five Civilized Tribes. In section 1 it provided for the removal of restrictions from all allotments of allottees having less than half Indian blood and also from certain lands of all allottees enrolled as mixed blood, and Indians having one-half or more and less than three-fourths Indian blood.

Section 9 reads as follows:

"That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land; *Provided,* That no conveyance of any in-

terest of any full blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee. *Provided further,* That if any member of the Five Civilized Tribes of one-half or more Indian blood, shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior, in the manner provided in section one hereof, for the use and benefit of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions; *Provided further,* That the provisions of section twenty-three of the Act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section."

By this provision Congress removed all restrictions on lands of the allottee immediately upon his death, but provided the manner in which conveyances of full-blood Indian heirs should be made. (*Sampson* v. *Staples*, 155 Pac. 215.) In construing the pro-

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visos in the same section it will be seen that it was not the intention of Congress to consider that the land inherited by full-blood adult Indian heirs should be classed as restricted land, nor was it considered that the provisos requiring the approval of the County Court to deeds of conveyances of full-blood Indian heirs, would be classed as a restriction, because in the next proviso, Congress provided that if any member of the Five Civilized Tribes of half or more than half Indian blood shall die leaving issue born after March 4, 1906, that the homestead of said deceased allottee *shall remain inalienable unless* restrictions against alienation be removed by the Secretary of the Interior in the manner prescribed in section one; that is the said homestead would be inalienable and remain for the use and support of said issue during their life, or lives until 1931; and then further provided that if no such issue survived then said allottee, if an adult, has the right to dispose of his homestead by will free from all restrictions, and also further provided that in the event no such issue survive which were born after March 4, 1906, and the homestead is not willed by the allottee, during his lifetime, or if issue were born after March 4, 1906, and such issue should die before April 26, 1931, that the lands should descend to heirs according to laws of descent and distribution of Statutes of Oklahoma, free from *all restrictions.*

It is then seen that the restrictions placed upon the manner in which conveyances of lands inherited by full-blood heirs should be executed (if it be classed a restriction) is not a federal restriction. Neither the federal government nor the Secretary of the Interior has any power whatsoever in the premises.

It will be observed, by an examination of all of the Treaties and Acts of Congress, pertaining to the lands of the Five Civilized Tribes of Indians that in the use of the term "Restricted Lands," Congress always had in mind those lands which were "inalienable" by the Indian until "restrictions against alienation thereof were removed" by an order made by the Secretary of the Interior.

Further than this, it is our belief that the provisions of Sec. 9 of Act of May 27, 1908, which specified the manner in which the conveyances of lands inherited by full-blood Indian heirs should be made, to-wit, by the approval of the County Court of the State of Oklahoma having settlement of the estate of the deceased allottee, is merely a specification as to the mode, or manner and form in which conveyances of such lands by said citizens who are full-blood Indian heirs, should be executed. The Legislature of the State of Oklahoma and of many other states in the Union prescribed in their statutes the manner and the form in which deeds of conveyances to homesteads

of their citizens may be executed. The Constitution of Oklahoma prescribes that a deed of conveyance to lands constituting the homestead of a family is absolutely void unless the deed of conveyance be executed jointly by both the husband and wife:

> "SEC. 2, ART. 12, OF CONSTITUTION. *Protected From Forced Sale—Consent of Wife.* The homestead of the family shall be, and is hereby protected from forced sale, for the payment of debts, except for the purchase money therefor or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon; nor shall the owner, if married, sell the homestead without the consent of his or her spouse, given in such a manner as may be prescribed by law: *Provided*, Nothing in this article shall prohibit any person from mortgaging his homestead, the spouse, if any, joining therein; nor prevent the sale thereof on foreclosure to satisfy any mortgage."

See also:

Hyde v. *Ishmael*, 143 Pac. 1044;
Whelan v. *Adams*, 145 Pac. 1158;
McCammon v. *Jenkins*, 145 Pac. 1163.

This is not a restriction. It is clearly a specification as to how the deeds conveying the homesteads shall be executed.

It was done for the purpose of requiring both husband and wife to consent when their homestead is sold by requiring that they join in such conveyance.

It was done for the protection of the homes of the citizens in order that the sale of the homesteads of families of Oklahoma citizens may not be sold without the consent of both the husband and wife.

Sec. 9 of Act of May 27, 1908, prescribed a manner or mode by which conveyances of full-blood Indian heirs should be executed, to-wit, by the approval of the proper County Court.

Under the laws of the State of Texas, it is prescribed by the statute not only that deeds of conveyances of homesteads of its citizens must be executed jointly by both the husband and wife, but that their acknowledgments as to the execution of same, of both the husband and wife should be taken separately and in the absence of the husband and wife, one from the other.

It has been held by the courts of Texas that where acknowledgments of the execution of such deeds to said homesteads by the husband and wife were not executed separately in the manner prescribed, to-wit: the acknowledgment of the wife should be taken privately from the husband, that the conveyance of said homestead is void. It has been held by the courts that deeds to lands of full-blood Indian heirs are null and void unless executed in the prescribed manner, to-wit: with the approval of the County Court having jurisdiction, etc. A husband and wife, inhabitants of the State of Oklahoma, have

the right to sell their homesteads and so have the full-blood Indian heirs of the Five Civilized Tribes the right to sell the lands inherited by them. They are not restricted or prevented from alienating or selling same but a manner or mode in which said conveyances shall be executed is prescribed by law. That is to say that the homestead of the family shall be conveyed only when joined in by both the husband and the wife, under the terms of the statute of the state applicable thereto, and that deeds of conveyances to lands inherited by full-blood Indians of the Five Civilized Tribes shall be approved by the County Court, as prescribed by law.

The proviso requiring County Court approval of conveyances by full-blood Indians of their inherited allotted lands has no field for operation except merely to provide a procedure for alienation of such inherited lands or some interest therein. The oil and gas lease involved is a conveyance of an interest in the land within the meaning of said Act of Congress.

That part of section 9 which removes all restrictions means precisely what it says. The natural and literal meaning of the words "remove all restrictions" is clear. The words "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land" need no construction, and

therefore it must be held that the act itself defines the County Court approval provided for *as mere procedure*. While restrictions are on Indian land the owner has no power to negotiate and close a deal for the sale of the land. But upon removal of restrictions the Indian owner has the full power to close a deal for the conveyance of his land or any interest therein and make the same entirely effectual, subject only to the purely ministerial act of approval by the County Court having jurisdiction of the estate of the deceased. The term "restrictions" when applied to the alienation of land has a very broad meaning. The removal of all restrictions, therefore, was very comprehensive. The natural and literal meaning of a statute removing restrictions upon alienation should not be enlarged by implication, for, as was held in the *Mullen* case by this court, restrictions upon alienation are found in the *express* provisions of the statute. If County Court approval is to be considered a restriction upon alienation such restriction must be found in the statute—it is not there. On the contrary, the statute in effect declares that the County Court approval is not a restriction but a mere procedure in that it does expressly provide that the act removes all restrictions of every kind and character upon alienation of the land or any interest in the land.

Counsel for the appellants, on page 10 of his brief, says in effect that the class of lands here involved are "restricted" lands and that therefore an oil and gas lease executed now by an adult full-blood Creek Indian on land inherited by him would necessarily require the approval of the Secretary of the Interior, before such oil and gas lease would be valid, basing his statement upon that portion of section 2 of the Act of 1908, providing for the approval of the Secretary of the Interior of oil and gas leases on "restricted" lands. To our minds his entire argument falls here completely, if not for various other reasons argued by us, because it is an elementary and well established principle of statutory construction that in construing a statute, consideration must be given to the entire statute including all its parts, and not to consider only an isolated paragraph or section of the statute, in order to ascertain the intention of the makers of such legislation. It is now well settled by the decision by the state and federal courts, as well as by historical knowledge, that the purpose of Congress in enacting the Act of May 27, 1908, was to include therein, complete legislation as to the status of all of the allotted lands of the Five Civilized Tribes, and the Act of 1908 embraces within itself, the complete law as to what lands of the Five Civilized Tribes of Indians, since that date are "restricted" and inalienable, and as to

what lands of the Five Civilized Tribes of Indians are "unrestricted" and alienable, and by an examination of the entire act in itself, as well as an examination of all the prior Acts of Congress dating back with the Original Creek Treaty, it will be observed that in the use of the term "restricted" lands, Congress has always had in mind only the classes of allotted lands which were inalienable and which the Indian could not sell except without first securing "the removal of restrictions" therefrom, by the Secretary of the Interior.

Not only is it plain that that part of section 2, requiring the approval of the Secretary of the Interior on oil and gas mining leases covering "restricted" lands embraces only those lands, which under the terms of the act itself, continued to be inalienable except with the removal of restrictions from the lands by the Secretary of the Interior, but the attempt to place any other construction thereon would upset the entire scheme of Congress, which it had in mind in its passage of this act, and would overthrow the title upon thousands and thousands of acres of land in the Eastern portion of the State of Oklahoma.

To uphold a contention that "restricted" lands, as referred to in section 2 of the act includes oil and gas leases on lands inherited by adult full-blood Creek Indians because their conveyances thereof

must be approved by the County Court of Oklahoma, under the first proviso of section 9, would be to say that an oil and gas mining lease on lands owned by Indian minors of less than one-half Indian blood (because conveyances of lands owned by such minors are void when made during minority unless the conveyance is approved and confirmed by the proper County Court after the proper guardian sale thereof, see *Truskett* v. *Closser*, 236 U. S. 223), would also necessarily require the approval of the Secretary of the Interior under the term of said section 2, and we do not anticipate for a moment that any one would attempt to make the assertion that such is the law.

Again, in the middle of page 12, of the brief of counsel for appellants, appears the statement, as follows:

> "In other words, whether the present appellee, Eastman Richard, is an incompetent or not because he is a full-blood Indian, it is certain that if he were a minor the probate court would have no power to approve an oil and gas lease of his inherited land."

And this statement we wish particularly to call to the attention of the court and to say in no uncertain language, that the same is an incorrect and erroneous statement of the law. See:

Harris v. *Bell*, 250 Fed. 209, and
Etchen v. *Chaney*, 235 Fed. 104.

The oil and gas lease is a method of alienation within the meaning of said section 9.

—*Hoyt* v. *Fixico,* (Okla.) 175 Pac. 517;

Moore v. *Sawyer,* 167 Fed. 826;

Eldred v. *Okmulgee Loan & Trust Company,* 22 Okla. 742, 98 Pac. 929;

Parker v. *Riley,* 243 Fed. 42;

Guffey v. *Smith,* 237 U. S. 101, 59 L. ed. 856;

Rich v. *Doneghey,* (Okla.) 177 Pac. 86.

In *Hoyt* v. *Fixico, supra,* the Supreme Court of Oklahoma held:

> "An oil and gas mining lease executed February 11, 1915, by a full-blood heir of a deceased Creek Indian allottee, is a 'conveyance of an interest' in said lands, and is void unless approved as required by section 9, Act Cong. May 27, 1908, c. 199, 35 Stat. 315."

In *Rich* v. *Doneghey, supra,* the Supreme Court of Oklahoma, construing a lease similar to the one here involved, held:

> "The grant of oil and gas underlying the grantor's land to one and his heirs and assigns forever, carries an interest in the fee."

Upon the same point it was also said:

> "It will at once be seen that by this instrument the plaintiffs granted to the defendant the present vested interest in their land."

Discussing the Illinois cases construing oil and gas mining leases, where it had been held that the oil lease conveyed an interest in the realty, the Supreme Court of Oklahoma, in the *Rich* case, said:

> "Moreover, there is no substantial difference between the earlier holdings of this court and of the Illinois court as to the character of the interest acquired by the lessee under the instrument here under consideration. * * * Therefore the only difference between the decisions of the Illinois court and this court as to the right acquired by the lessee under an oil and gas lease for a definite term, and as long thereafter as oil and gas is produced, 'a freehold interest in land,' while we have designated it *'an interest in land'* without saying whether such interest amounts to a freehold, and in the two states such interests are taxed by different methods, which results not from a difference in conception of the character of the interest, but from the applicable statutes pertaining to taxation thereof."

The case of *Guffey* v. *Smith*, 237 U. S. 101, 59 L. ed. 856, is squarely in point upon the proposition that such an oil and gas mining lease conveys an interest in the realty. The early Oklahoma cases defined an oil and gas mining lease as a mere license or option which conveyed no interest in the real estate, but after the decision of this court in *Guffey* v. *Smith*, *supra*, it soon became apparent that the Oklahoma cases were not in line with au-

thority and that they were not sound upon principle and the later cases have brought Oklahoma in line with other jurisdictions and with the decisions of the Supreme Court of the United States, and it is now settled in Oklahoma that this oil and gas mining lease conveys an interest in the land. It follows therefore, that all oil and gas mining leases covering all classes of inherited Indian lands of both adult and minor heirs (except only that class of homesteads specifically provided for in the second proviso of section 9, to-wit: homesteads of allottees of one-half or more Indian blood, who died leaving issue born since March 4, 1906, which homesteads remained *inalienable,* for the use and support of such issue until April 26, 1931) have been withdrawn entirely from the jurisdiction of the Secretary of the Interior and require only the approval of the proper County Court of the State of Oklahoma, as specifically provided for in the first proviso of section 9. It is contended in the brief for appellants that in the case of full-blood minor heirs the Secretary still has the authority to approve oil and gas leases on this class of inherited lands, executed upon their behalf, but this contention is unsound. *Harris* v. *Bell,* 250 Fed. 208, by the Circuit Court of Appeals for the Eighth Circuit, holds, following cases there cited, that the County Court approval only is sufficient to validate a lease made upon the behalf of a full-

blood Indian minor (except as to that particular class of homesteads inherited by those minor heirs born since March 4, 1906, and which class of inherited homesteads are absolutely inalienable and specifically provided for in the second proviso of said section 9, of Act of 1908 for benefit of those minors born after the Act of 1906, and too late to receive any individual allotment). To the same effect is *Etchen* v. *Cheney*, 235 Fed. 104. Said section 9, therefore, provides that the full-blood Indian heirs themselves and the County Courts, in proper cases, shall have complete power and jurisdiction over all oil and gas mining leasehold interests to convey the same in any manner deemed proper by them. The right in the full-blood Indian heir to convey the leasehold interest on inherited lands freed from any supervision of the Secretary of the Interior, carries with it necessarily the right to receive and manage the funds accruing from said leasehold interest. *The Act of May 27, 1908, as has often been held provided a complete, comprehensive and new scheme, classifying all Indians of the same degree of blood alike, thereby doing away with the confusion theretofore incident to various acts affecting different members of the tribes in different ways. But this act cannot be said to be a complete and comprehensive scheme if there is left in the Secretary of the Interior the right to manage the royalties com-*

ing from inherited lands and leaving to the Indian himself, with the approval of the County Court, the right to convey the leasehold interest. It will not be denied that Eastman Richard has the right to cancel the existing lease, with the consent of the lessee and, with the approval of the County Court, to make a new lease providing that the accruing royalties shall be paid direct to him. *It is manifest that the power to do the larger and more important thing, namely to convey the land itself, carries with it the lessor's right to receive the profits from the leasehold.* Any other construction would be absurd and would destroy the symmetry and completeness and uniformity of the scheme provided by the Act of May 27, 1908.

Counsel for appellants on pages 9 and 10 of his brief, cites the cases of: *Tiger* v. *West. Investment Co.*, 221 U. S. 296; *Brader* v. *James*, 246 U. S. 88; *Talley* v. *Burgess*, 246 U. S. 104; and *Marcy* v. *Board of Commissioners*, 45 Okla. 1, 144 Pac. 611; but these cases are not controlling decisions on the question involved in this case because they do not cover the point of law that is here involved, nor was the question, which is here involved, directly presented to the court in either of the cases mentioned. The question presented to the court in the *Tiger* case was

> "Whether or not deeds executed by full-blood Indian heirs after the passage of the Act of

> April 26, 1906, and prior to the Act of May 27, 1908, and which were not approved by the Secretary of the Interior, are valid or void deeds."

The court held in the *Tiger* case that the deeds were void, because they were not approved by the Secretary of the Interior.

The question presented to the court in the *Brader* v. *James* case was,

> "Could a full-blood Choctaw Indian, after the passage of the Act of April 26, 1906, and prior to the passage of the Act of May 27, 1908, convey the land inherited from a full-blood Choctaw Indian, to whom the lands had been allotted during her lifetime without the approval of the Secretary of the Interior."

It will be remembered that in that case the court held that the deeds executed by the full-blood Indian heir, after the passage of the Act of April 26, 1906, and prior to the passage of the Act of 1908 was not valid, unless approved by the Secretary of the Interior, in the manner provided by Congress, and the question involved in this case as to whether or not the Secretary of the Interior has the right to control and supervise oil leases on land inherited by full-blood Indian heirs, after the death of the allottee, was not in any manner involved in that case. Even in the case of *Brader* v. *James*, the court refers to the *Tiger* case, and uses the following language:

> "The act of April 26, 1906, was a comprehensive one, and intended to apply alike to all of the Five Civilized Tribes, and made *requirements* as to the conveyance by full-blood Indian heirs, *which should take the place of former restrictions and limitations.* The purpose was to substitute a new and uniform scheme controling alienation in such cases operating alike as to all of the Five Civilized Tribes."

Nor in the case of *Talley* v. *Burgess, supra*, was the question involved in this case raised or submitted.

The issue presented in this case is whether or not *the Department of the Interior has the power to continue to supervise a conveyance of the land in question after the death of Samuel Richard*, and *whether or not the Department of the Interior has the right to continue to collect the rents and profits daily accruing from the lease on this land since the death of Samuel Richard.*

It is our contention as stated before, that *after the death of Samuel Richard, all supervision, so far as the Department of the Interior is concerned, immediately ceased.* That *under the terms of Act of 1908, if this land is subject to supervision at all, the supervision is given to the County Court of Oklahoma, and not to the Secretary of the Interior.* In the *Marcey* case, *supra*, the question here involved was

not directly presented to the court. The point presented and decided in that case was whether or not lands inherited by full-blood Indians were taxable or non-taxable, and the courts properly in that case, held that the lands were non-taxable. This is a proper decision and clearly carried out the intent of Congress that the lands inherited by full-blood Indians should not be subject to taxation or subject to an *involuntary* sale or conveyance.

Congress in providing in the 1908 act for removal of restrictions against alienation by the heirs upon the death of the allottee, contemplated giving the full-blood Indian heir the right to make a *voluntary* alienation, but did not intend that his lands could be alienated from the heir *involuntarily,* such as by taking same upon execution, or for delinquent taxes, etc., and, therefore, provided that his alienation should be approved by the County Court.

As stated in the case of *In re French's Estate,* 147 Pac. 319, in speaking of removal of all restrictions the court says:

> "Section 1 of the Act of April 21, 1904 (33 Stat. at L. 189, c. 1402), providing that '* * * all restrictions upon alienation' of 'lands' 'of all * * * allottees' of either of the Five Civilized Tribes of Indians who are not of Indian blood, 'except minors,' are 'except as to homestead,' hereby 'removed * * *' should be construed to

> authorize *voluntary* alienations only as distinguished from *involuntary* or enforced encumbrances, sales, or takings, such as are referred to in the first part of section 14 of the above act."

The court in the *Marcey* case, *supra,* decided that the proviso was a restriction against an *involuntary* alienation. The question as to whether or not the land is "restricted" against a *voluntary* alienation was not directly presented to the court in that case and, therefore, that case is not controlling as to the issue raised here.

It was intended by Congress by Sec. 9 of Act of May 27, 1908, in removing restrictions against alienation on allotted lands, upon the death of the allottee, to protect the full-blood Indian heirs, by providing that their lands should not be subject to involuntary alienation either by taxation or sold to satisfy any debt contracted *prior* to the removal of restrictions, when it specified that the deeds of conveyances by such full-blood Indian heirs should be approved by the County Courts designated. This for the purpose of protecting the Indian in seeing that when he sold his land he would receive an adequate consideration therefor. As said in the opinion in the case of *Hope* v. *Foley*, 157 Pac. 727:

> "The title to inherited lands was in the heir, and the heir had the right to convey upon approval of the approving agency * * * The object

of requiring the approval was to place the incompetent Indian on an equal footing with the person dealing with him, presumably competent, and the purpose of the approval was to require a disinterested agency to examine into the transaction and ascertain whether or not the Indian grantor had been overreached in the trade. If the investigation convinced the approving agency that the full value of the land had been paid and received by the grantor in the deed, whether paid on the date of the execution of the conveyance or when presented for approval, or paid at some prior time, could make no difference. That particular thing was that the full value of the land had been paid to the Indian."

If it be admitted, for the sake of argument, that the United States Indian Agent still had the authority, to-wit, to hold from the heirs moneys collected by him prior to the death of Samuel Richard, because of the adopted amendment to Rule 25, *supra* (all of this we deny, however), yet there is no authority granted to the United States Indian Agent to continue to collect the moneys derived from the sale of oil extracted since the death of Samuel Richard, and which are now accumulating from the sale of oil which has been extracted and is being extracted from this land since the death of Samuel Richard, *because all further supervision over this lease so far as the Secretary of the Interior or the United States Indian Agent is concerned ceased after the death of Samuel Richard.*

The supervision of conveyance of this land according to the terms of Sec. 9 of Act of 1908, is given to the County Court.

Eastman Richard can sell this inherited land without approval, sanction or supervision of the Secretary of the Interior, or the Indian Agency. If he sees fit not to sell this land, cannot he collect the rents and royalties daily accumulating from the sale of oil extracted from this land?

To admit that Eastman can sell the fee simple title to this inherited land, and collect the purchase price therefor without any supervision of the Secretary of the Interior, and at the same time to contend that if Eastman Richard does not sell this land that Eastman Richard cannot collect the rents and profits derived from same, is inconsistent. Such a holding in effect would be to say to Eastman Richard:

> "Eastman Richard you can sell this land inherited by you from Samuel Richard, with the approval of the County Court of McIntosh County, Oklahoma, and you can also collect the purchase price for which you agree to sell it even though it be a half million dollars and the Secretary of the Interior cannot prevent you from selling this land, nor can the Secretary of the Interior or Indian Agent collect the money you get from the sale of the land,"
>
> BUT
>
> "If you do not sell this land you cannot col-

lect the rents and profits daily accruing therefrom, but the Secretary of the Interior or his subordinates, the United States Indian Agent, can collect same and hold it as long as he sees fit."

If it be held by the courts that the Indian Agent can withhold this money collected *prior* to the death of Samuel Richard, and also can continue to collect the royalties from this land, *since the death of Samuel Richard, then Eastman Richard will be compelled to sell this inherited land and collect this money for which he agrees to sell it, in order to get in his possession money from this land.* It does not seem to us that the courts will hold that such is the law. Eastman Richard can sell this land without the sanction or supervision of the Secretary of the Interior, and in fact he has been besieged by numbers of oil companies since the death of Samuel Richard endeavoring to induce him to sell this valuable tract of oil land. He has been offered as much as $500,000.00 for same, but in as much as Eastman already has sufficient unrestricted moneys from other sources, he does not desire to sell this valuable oil property. He no doubt realizes if the oil companies can buy this land and make a profit from the sale of royalty oil extracted therefrom that it is good business policy to hold the land and collect the royalties himself. No doubt Eastman Richard feels that if he has the legal

right to sell this land and collect the value of same in money without supervision of the Indian Department, he no doubt feels that he has the legal right to collect the royalties and moneys derived from the sale of oil daily extracted from the sale of land without supervision of the Department of the Interior.

The Supreme Court of Oklahoma in the case of *Hope* v. *Foley, supra,* holds that the land inherited by the full-blood Indian heir is not "restricted" land, because the heir can alienate the same: All that is necessary is that after the heir and the purchaser (the grantee and grantor) make their contract of sale, that the County Court approve the transaction. This provision no doubt was made by Congress because it realized that all restrictions were removed by Sec. 9 of Act of 1908, and it was deemed wise to provide the conveyance when made by the heir be approved by the County Court in order to avoid improvident sales. The object of requiring the approval by the County Court was to place the Indian on an equal footing with the person dealing with him, so that the County Court might see that the grantor was not overreached in the transaction.

In the case of *Sampson* v. *Staples,* the Supreme Court of Oklahoma, says:

> "This act (Act of 1908) does not reimpose restrictions *(United States* v. *Bartlett et al.,* 235 U. S. 72, 35 Sup. Ct. 14, 59 L. ed. 137); but it does

require the conveyance of inherited lands by full-blood Indian heirs to be approved by the County Court."

From an examination of the opinion rendered by the United States Circuit Court of Appeals in this case (Rec., p. 43; 245 Fed. 330) it will be observed that the court gave this question thorough consideration and examined the records and Congressional reports of the different branches of Congress in connection with the passage of the Act of May 27, 1908, in order to ascertain what at that time was the true object sought by Congress in passing that legislation, and it was ascertained from the reports of the two houses that the object of the act passed by Congress in 1908 was to release about 8,000,000 acres of land or one-half of the restricted allotments from further supervision by the United States over its alienation, and we certainly think that the court correctly interpreted the law and that it was correct when it announced in its opinion that it believed that "Congress did not intend, in allowing the heirs of allottees to alienate their land free from all restrictions subject only to the approval of the proper probate court, to leave the heir in the same position as the intestate was before his death. The legislation meant something. Neither did Congress intend to postpone the enjoyment of the estate of the heir until after he had sold it with the

approval of the probate court, which would be the only way he could remove the only restriction left."

Expediency.

The appellants have invoked expediency. If expediency is to be considered the appellants must lose to Eastman Richard. Let us assume for a moment that Eastman Richard is competent to manage his affairs. If he is competent then surely he ought to have his money. Let us suppose, on the other hand, that he is not of unsound mind but that he has no business skill and that he might be cheated out of his estate. If that is true, in what situation would he be if this fund is delivered up? The Supreme Court of Oklahoma has answered this question, construing the Oklahoma statutes most favorably for the protection of the Indians. In *Shelby* v. *Farve*, (Okla.) 126 Pac. 764, it was held that whenever it appears to a County Court *that for any cause whatever an Indian is unable, unassisted, to properly manage and care for himself or his property, or that he would be likely to be deceived or imposed upon by artful or designing persons, that he should have a guardian to care for him and for his estate.* In the *Shelby* case, construing the Oklahoma statute providing for the appointment of a guardian for incapable persons, the court in defining the words "incompetent" and "incapable," said:

> "The phrases 'incompetent,' 'mentally incompetent,' and 'incapable,' as used in article 15, c. 86, sections 5485, 5486, Comp. Laws 1909, mean any person who though not insane, is, by reason of old age, disease, weakness of mind, or from any other cause, unable unassisted to properly manage and take care of himself or his property, and by reason thereof would be likely to be deceived or imposed upon by artful or designing persons."

If, therefore, Eastman Richard is a person who, for any cause, is unable, unassisted, to properly manage and care for his estate, if, for any reason, he is the sort of person likely to be deceived or imposed upon by artful or designing persons, the County Court of the county in which he resides will appoint a guardian to take care of his estate. If he is that sort of an Indian the court will see to it that the moneys in the hands of the Indian Superintendent and the cashier of his office are not received by Eastman Richard in person but that they be taken by a guardian. However, it would seem from the record in this case since Eastman Richard was the guardian of his child he is the sort of person who is capable of managing his estate.

In addition to the supervisory control of the County Courts over incompetent Indians, there are many other safeguards. Every court has in attendance from time to time a United States probate at-

torney, provided for by the Act of May 27, 1908, whose duty it is to aid and assist Indians. These probate attorneys have the right to appear for all Indians of Eastman Richard's class. They have a right to appeal on behalf of the Indians, as has been held by the Supreme Court of Oklahoma. Any probate attorney in actual attendance in a County Court of Oklahoma dissatisfied with an order or decree may appeal within ten days, and it has been the practice to appeal without bond from every order which the probate attorney deemed against the interest of an Indian. If not in actual attendance such probate attorney has thirty days after the order is entered to appeal. Take the case of an incompetent Indian: If an unsatisfactory order is made in the County Court the probate attorney may appeal to the District Court, which is a court of general jurisdiction, where there is a trial *de novo*. If dissatisfied with the decree of the District Court he may appeal to the Supreme Court of the state. In every matter involving an Indian question the courts of Oklahoma have been sound in this: they have shown a disposition in every case of doubt to put that construction upon the statute which is most beneficial to the Indians. Then there are field clerks to report to the Indian office and to advise probate attorneys, and government farmers to look after the Indians and report whether they are doing well

The Indian Superintendent for the Five Civilized Tribes resides at Muskogee, about in the center of what was formerly the Indian country. He has a large office force which he can use in advising and assisting the Indians and in helping the courts of the country. What this situation needs is that the Indian office respect the courts instead of overruling and ignoring them. This office should aid and advise the courts rather than to usurp the authority of the courts and in so doing the intention of Congress would be given full force and effect. It is hardly necessary to state that as the situation now exists that beautiful thing called "comity" hardly exists between the Department of the Interior and some of the courts, because the courts can not tolerate the disregard of their lawful orders.

II.

Repeating our Second Proposition:

The amendment to Rule 25 promulgated November 29, 1912, after the execution of the lease, was and is unenforceable as against the lessor and his heirs, because the amended rule attempts to change the terms of the lease contract.

The defendants base their sole and only claim or right to hold the funds in controversy, upon the alleged authority contained in the amendment to Rule 25, adopted Nov. 29, 1912, (Page 28 of Rules and Regulations). The lease in question was executed April 13, 1912, and the lessor executed the same under the rules and regulations of the Secretary of the Interior then in force, as to the terms and manner of payment of the royalty money, which was as follows:

> "*25.* All royalties, rents or payments accruing under any lease made for or in behalf of any minor or incompetent shall be deposited by the Indian Agent or other Government officer to whom paid, to the credit of the guardian or curator of such minor or incompetent, in some national bank or banks designated by the Commissioner of Indian Affairs, and may be withdrawn therefrom by such guardian or curator, with the consent of the United States Indian Agent in sums not exceeding $50 per month unless otherwise ordered by the court. Sums in excess of $50 per month may be withdrawn on order of the proper

court and not otherwise. Such designated banks shall furnish satisfactory surety bonds, to be approved by the Secretary of the Interior, guaranteeing the same care and custody of the funds so deposited." (Page 12 of Regulations.)

It will be observed that under the rules and regulations which were in force at the time of the execution of the lease, that the royalties and payments accruing under the lease should be collected by the Indian Agent for the minor and deposited to the credit of the guardian of the minor in a bank and could by him be withdrawn from the bank in sums not exceeding $50 per month and could be withdrawn from the bank in sums in excess of $50 per month by order of the Probate Court. It was with the understanding that the lessor would receive payments of the royalty money accruing under the lease in this manner when he executed the lease in question. In paragraph 8 of lease it is provided as follows:

"8. This lease shall be subject to the regulations of the Secretary of the Interior, now or hereafter in force, relative to such leases, all of which regulations are made a part and condition of this lease; *Provided*, however, that *no regulations made after the approval of this lease, affecting* either the length of term of oil and gas leases the rates of royalty or *payment thereunder*, or the assignment of leases, *shall operate to affect the terms and conditions of this lease.*" (Rec. p. 15.)

Thus it will be seen that when the Secretary of the Interior promulgated the Amendment to Rule 25, on Nov. 29, 1912, five months after the lease was executed, which amended rule reads as follows:

> "*Provided However*, that the said superintendent, or other officer in charge of the Union Agency, is authorized in his discretion, where considered for the best interests of any adult, minor or incompetent lessor, or his heirs for whose account royalties, rents or payments accruing under any lease have been paid to said superintendent to withhold the disbursement of such royalties, rents or payments, wholly or in part from any such adult, or guardian or curator of any such minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of the said lessor, of his or her heirs." (Page 38 of Regulations.)

That he changed the terms of the payment of royalty money to the lessor from the terms of the the manner of payment thereof which were in force at the time the lease was executed and that in so doing, he attempted to give himself and his subordinates the power to withhold such amounts as he deemed proper on the royalty payments accruing from the lease. This new rule and regulation concerning terms of payment, it will be seen was made 5 months after the execution of the lease and was made without the consent or knowledge of the lessor and therefore was

such a change in the terms of the lease contract as would not be binding upon the maker of the lease contract, especially in view of the expressed conditions in the contract to the effect as is contained in the proviso in paragraph 8 of the lease above quoted.

In this connection we invite the court's attention to the case of *Midland Oil Company, et al.*, v. *Turner, et al.*, 179 Fed. 74.

Indeed, at the time of the execution of the lease, the lessor would not have executed the same under the provisions that all the payments accruing therefrom could be collected by the Indian Agent and by him withheld for an unlimited time, but the lessor executed the lease with the understanding that he could collect the rentals and payments through his guardian from the bank in which they were deposited, under the orders and jurisdiction of the Probate Court. For this reason, if for no other, we say that the rule and regulation made Nov. 29, 1912, five months after the execution of the lease, changed the terms of the contract as to the terms of payment and therefore is void.

III.

Repeating our Third Proposition:

Upon the death of Samuel Richard on January 24, 1916, all governmental supervision over the lease on his allotment of land ceased, even though, as a matter of law, all restrictions as to alienation are not removed.

Even though it be held by the court that because a deed by the heir of Samuel Richard requires approval by the County Court that this constitutes a "restriction" in the sense it was meant to be used by Congress, yet ALL *GOVERNMENTAL SUPERVISION* OVER THE LEASE ON THIS LAND CEASED IMMEDIATELY UPON THE DEATH OF THE ALLOTTEE, Samuel Richard. *Likewise all governmental supervision over a sale of the entire fee in the land by the heir of Samuel Richard immediately ceased upon the allottee's death. All supervision of the Secretary of the Interior over the lease on this land ceased upon the death of the allottee, Samuel Richard. The right that the Secretary of the Interior had during the allottee's lifetime to remove restrictions against alienation of the land, or to approve a lease on the land, or to supervise or approve a sale of the land, or to supervise and collect the proceeds of sale of oil extracted*

from the land, all immediately ceased upon the death of the allottee, Samuel Richard. We take it, since the death of Samuel Richard, that no one will attempt to contend that the Secretary of the Interior has the right to either remove restrictions from the land, or to supervise or approve a sale or conveyance of the land, or to supervise or approve a lease on the land, or the power to supervise and collect the proceeds of sale of oil extracted from the land, where a lease is executed by the full-blood heir. Therefore, why has he any power to continue to exercise supervision over the lease on this land, and to continue to collect the proceeds of sale of oil extracted from the land, since the death of the allottee, Samuel Richard?

It was the intention of Congress by the Act of May 27th, 1908, to provide that upon the allottee's death, all further supervision over the land by the Secretary of the Interior would cease and that thereafter the land would be free of all further restrictions or supervision, save and except that a conveyance of same should be approved by the County Court.

It has been repeatedly held by the courts that Sec. 9 of the Act of May 27th, 1908, reading as follows:

"That the death of any allottee of the Five

Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided further*, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March fourth, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one; but if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restrictions; if this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nineteen hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from all restrictions: *Provided further*, That the provisions of section twenty-three of the act of April twenty-sixth, nineteen hundred and six, as amended by this act, are hereby made applicable to all wills executed under this section,"

operated to rescind the authority and power given to the Secretary of the Interior by section 22 of the

Act of 1906, to supervise conveyance of lands inherited by full-blood Indians.

—*Hope* v. *Foley,* (Okla.) 157 Pac. 727;
United States v. *Knight,* 206 Fed. 145;
MaHarry v. *Eatman,* (Okla.) 116 Pac. 935;
Sampson v. *Staples,* (Okla.) 155 Pac. 213.

Prior to the passage of the 1908 act, all conveyances of full-blood Indian heirs had to be approved by the Secretary of the Interior, under the provisions of section 22 of the act approved April 26, 1906 (30 Stat. L. 137), but after the passage of the Act of May 27, 1908, neither the Secretary of the Interior nor any official of the Department of the Interior had the right to exercise any control or authority over this class of conveyances.

The rules and regulations of the Secretary of the Interior relative to oil and gas leases made no provision for the leasing of this class of lands, thus clearly indicating that the Secretary of the Interior did not consider the same restricted.

By an Enabling Act approved June 16, 1906 (34 Stat. L. 267), the inhabitants of Oklahoma and Indian Territories were granted the right to establish a state, which was done November 16, 1907.

Prior to this time it had been the policy of Congress, as shown by its legislation, to withdraw federal supervision over citizens of the Five Civilized

Tribes as soon as they were found able to maintain themselves and to let them become full-fledged citizens of the new commonwealth. (It might be well to call attention here to the fact that the Indians of the Five Civilized Tribes possessed a far greater degree of intelligence and of civilization than any other Indian Tribe in these United States, and hence were called the "Five Civilized Tribes" of Indians, and it was no doubt for these reasons that Congress so rapidly, in its series of legislation, released the greater portion of these Indian allottees from federal supervision.)

First Congress created the Dawes Commission; then abolished the Tribal Government; then made these Indians citizens of the United States and then by a series of acts removed their restrictions—*first*, by the Act of 1904, from those allottees not of Indian blood, and *second*, after statehood, by Act of May 27, 1908, from the mixed-blood Indian allottees and from the full-blood Indian heirs, so that they might help bear the burden of self government, as well as enjoy the blessings thereof.

It was the wise policy of Congress to relinquish its control step by step and to throw same upon the local government gradually, so that the Indian citizens would become accustomed to dealing with the new government gradually; and it was also the policy to bring the Indian in touch with the new gov-

ernment at as many points as possible. For this two-fold reason, Congress provided that conveyances should be approved by the courts with whom the Indian must come in contact in most all of his affairs. Each full-blood allottee has his own allotment, restricted and non-taxable. His wife and each child born prior to the closing of the rolls has an allotment. Many of them were heirs to one or more allotments from deceased kin. They were land poor.

Congress was willing for them to dispose of their inherited lands, but as a safeguard charged the County Courts of Oklahoma with the duty of approving such conveyance so that the heirs might not be overreached. Neither the Secretary of the Interior nor any other government officer could prevent the approval of conveyances on such class of lands. The Secretary of the Interior can not prevent the Indian heir from conveying or selling his inherited lands; nor can he prevent a County Court of Oklahoma from approving the conveyance of the Indian heir; Congress in releasing this class of lands in the hands of the Indian heirs from the federal supervision that existed prior to the Act of 1908, merely prescribed the mode and manner by which such conveyances should be executed.

In order to throw light on the reasons for the adoption of this rule it may be proper to examine into the history of the adoption of the amendment

and ascertain what was the intention of the Secretary of the Interior at the time same was adopted.

It was not the intention of the Secretary of the Interior by the adoption of Rule 25 to attempt to retain supervision over leases of this class of lands; it was adopted only for the purpose of retaining supervision over the class of lands which continued to be subject to federal control and supervision, under Act of May 27, 1908.

Under the provisions of the Act of May 27, 1908, *supra*, there is a class of inherited lands still subject to the governmental supervision even after the death of the allottee, but it does not include lands inherited by adult full-blood Indian heirs. Section 9 of the act reads as follows:

> "That the death of any allottee of the Five Civilized Tribes shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, that no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee: *Provided, Further, That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving born since March 4th, nineteen hundred and six, the homestead of such deceased allottee shall remain inalienable unless restrictions against alienation are removed*

therefrom by the Secretary of the Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April twenty-sixth, nineteen hundred and thirty-one: But if no such issue survive, then such allottee, if an adult, may dispose of his homestead by will free from all restriction. If this be not done, or in the event the issue hereinbefore provided for die before April twenty-sixth, nine hundred and thirty-one, the land shall then descend to the heirs, according to the laws of descent and distribution of the State of Oklahoma, free from *all restrictions.*"

From this statute it will be observed that where the allottee died, his lands, both surplus and homestead, descend to the adult full-blood heirs, free of restrictions, except that the full-blood heirs' conveyance must be approved by the County Court, but where the allottee was enrolled as a half or more degree of Indian blood, and left surviving him a child, or children, born since March 4, 1906, that his homestead 40 acres, continued *inalienable* until April 26, 1931, unless the child or children died prior to April 26, 1931, or unless the Secretary of the Interior removed the restrictions against alienation. There is a clear distinction between these two classes of lands; the first being a class where upon the allottee's death the lands became free of restrictions, and the supervision of the Secretary of the Interior over same was rescinded or cancelled and the au-

thority to approve the heir's conveyance placed upon the County Court; in the second class, the lands (homestead 40 acres) continued to be restricted and INALIENABLE until April 26, 1931, etc., and such homesteads continued even after the death of the allottee to be subject to the supervision of the Secretary of the Interior. *It was this latter class of heirs that the amendment to Rule 25 was adopted to cover.*

This statute abrogates, cancels and rescinds all supervision of the Secretary of the Interior from lands inherited by full-blood Indian heirs who were adults. As to homesteads of certain allottees, to-wit: those allottees of one-half or more of Indian blood and who left children born since March 4th, 1906 (the date the rolls were closed), the homesteads continued to be inalienable until April 26, 1931. We contend that the Amended Regulations adopted on November 29, 1912, after the passage of this act, reading as follows:

> "*Provided, however,* that the said superintendent, or other officer in charge of the Union Agency, is authorized in his discretion, where considered for the best interests of any adult, minor, or incompetent lessor, or his or her heirs, for whose account royalties, rents or payments, accruing under any lease have been paid to said superintendent, to withhold disbursement of such royalties, rents or payments, whol-

> ly or in part for such adult, or guardian or curator of any minor or incompetent, or his or her heirs, until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs,"

applies to restricted Indian lessors during their lifetime, and ONLY to the heirs born since March 4, 1906, as above referred to. It was never intended to apply to ADULT FULL-BLOOD HEIRS, WHO MAY ALIENATE THEIR INHERITED LANDS WITHOUT APPROVAL OF THE SECRETARY OF THE INTERIOR, BECAUSE THE SECRETARY OF THE INTERIOR HAS NO AUTHORITY OR SUPERVISION OVER THE LAND, AFTER THE DEATH OF THE ALLOTTEE, EVEN WHERE THE INDIAN HEIR IS A FULL-BLOOD, IF *AN ADULT*.

Furthermore, the Secretary of the Interior has no legal power to make rules affecting lands of the unrestricted heirs; or the lands of heirs, who are freed from the supervision of the Secretary of the Interior, and the regulation in question does not give the superintendent or cashier of the Five Civilized Tribes, as agents, any legal right or authority to withhold payment of royalties accruing under the lease to the administrators of the estate of Samuel Richard for the beneht of the heirs.

It was not the intention of the Secretary of the Interior, when this rule was adopted, that the same should apply to lands or moneys accrued from lands, after the allottee died, where the heirs had the right to alienate their lands without supervision or control of the Secretary of the Interior. It was the intention at that time that the rules should apply to leases on lands which continued, after the allottee's death, to be subject to supervision of the Secretary of the Interior under the terms of the Acts of Congress, which are leases on those lands constituting the homestead (of allottees of one-half or more Indian blood who died leaving issue born since March 4th, 1906), which upon the death of the allottee continued to be inalienable and continued subject to the jurisdiction and supervision and control of the Secretary of the Interior until 1931.

The reason for continuing federal restrictions against this class of homestead lands, and making same *inalienable* until 1931 is clear. By an examination of the Acts of Congress it will be observed that it was the intention of Congress to reserve for all the Creek Indians, at least for a certain period of time, at least a portion of the lands of the Creek Nation. By early legislation allotments were given to the Creek allottees who were enrolled under the original treaties. Later, those Creek citizens who were born after May 1, 1901, and prior to March 4,

1906, were given the right to be enrolled under the provisions of the Act of April 26, 1906, *supra*. Those Indian children born after March 4, 1906 (after the rolls were closed), of course received no allotment of land. It was desired by Congress that some provision be made for those Creek Indian children who were born after March 4, 1906, who had no allotment, so in the next act which was passed by Congress on this subject, to-wit: Act of May 27, 1908, Congress provided in section 9, *supra*, that where allottees died, who were enrolled as one-half or more of Indian blood, and who had children born after the rolls were closed (that is, March 4, 1906), that the homestead lands should remain inalienable and be for the use and support of such children so born after March 4, 1906, during their life or lives until April 26, 1931, unless the Secretary of the Interior should remove the restrictions against alienation of same as provided for in section one of the act.

Therefore, inasmuch as under the provisions of the Act of May 27, 1908, the homesteads of certain allottees continued to be restricted and subject to the jurisdiction of the Secretary of the Interior, even after the death of the allottee, it was necessary to adopt an amendment to Rule 25 providing for the withholding of the funds of these heirs, as well as the funds of the living restricted Indians.

Departmental construction of section 9 of the Act of May 27, 1908, and of the regulations respecting oil and gas leases. Reason for the insertion of the word "heirs" in the regulations.

For years after the Act of May 27, 1908, the departments of the government construed section 9 of the Act of May 27, 1908, as removing all restrictions from the lands of deceased allottees excepting only the homesteads of deceased allottees reserved for the use of minors under provisions of the Act of May 27, 1908. The appellants put much stress upon the words "or his or her heirs" in the regulations authorizing the Indian Superintendent to hold the royalties from the lands of deceased allottees. This provision as to heirs was inserted in the amendment solely for the purpose of covering royalties accruing from homesteads of deceased allottees reserved for minors. At the very time of this amendment in which the word "heirs" was inserted, the department was relinquishing jurisdiction of all lands and royalties of the character here involved. Since writing the foregoing parts of this brief we have just discovered the true history of this amendment, which appears in the following letter from Mr. R. S. Cate, for many years a law clerk at the Union Agency, Muskogee, and acting United States Indian Agent in the absence of the then Indian Agent, Dana H. Kelsey, and in-

cidentally the same person who sent the lease on the lands in question to the Indian Commissioner for approval as shown on page 17 of the record in case 313:

"Messrs. Lucas & Tabor,
Attorneys at Law,
Checotah, Oklahoma.

Gentlemen: Replying to the inquiry of your Mr. Tabor as to the history of the amendment of November 29, 1912, to the oil and gas leasing regulations promulgated by the Secretary of the Interior, particularly with reference to the words 'or his or her heirs' in said amendment, I beg to advise that when the Act of May 27, 1908, was passed and for seven years thereafter, I was employed in the office of the Superintendent of the Indian Agency at Muskogee, Oklahoma, and acted as a law clerk, and in the absence of the Superintendent performed the duties of Acting Superintendent. The words in said amendment 'or his or her heirs' were inserted at my suggestion in the draft of the proposed amendment to the regulations to cover that class of cases arising under the provisions of the Act of May 27, 1908, which provides:

'That if any member of the Five Civilized Tribes of one-half or more Indian blood shall die leaving issue surviving, born since March 4, 1906, the homestead of such deceased allottee shall remain inalienable, unless restrictions against alienation are removed therefrom by the Secretary of the

> Interior in the manner provided in section one hereof, for the use and support of such issue, during their life or lives, until April 26, 1931,'

the construction of which act is now involved, I understand, in the case of *Parker* v. *Riley* pending in the Supreme Court of the United States.

Commencing about six months after the Act of May 27, 1908, at which time the Union Agency received advice from the department at Washington, the Union Agency relinquished jurisdiction of all leases, lands and moneys of deceased allottees except in the limited class of cases above referred to, that is to say, except in cases of homesteads reserved for minor children born subsequent to March 4, 1906. This relinquishment was made upon proof of death and upon examination of abstracts or other evidence showing the facts. During the three or four years subsequent to the passage of the Act of May 27, 1908, over a thousand cases were so relinquished.

Yours very truly,

R. S. CATE."

The foregoing letter of Mr. Cate states well known historical facts, and we have quoted same here in the belief that it may be of interest to this court.

It will further be observed by noting Rule 20 on page 27 of the Printed Rules and Regulations of

the Secretary of the Interior, reprinted on June 1, 1916, that these rules and regulations adopted by the Secretary of the Interior do not apply to lands owned by adult full-blood Indian heirs, after the death of the allottee. Section 20 reads as follows:

> "The classes of restricted lands to which the above quoted provisions of law and these regulations apply, are as follows:
>
> "*(1)* Homesteads of adult mixed-blood allottees having half or more than half and less than three-quarters of Indian blood;
>
> "*(2)* All allotted lands of adult mixed bloods of three-quarters or more Indian blood.
>
> "*(3)* All lands of adult full-blood allottees."

It is clear by reviewing the various Acts of Congress which gradually removed restrictions against alienation of lands of the allottees of Five Civilized Tribes, that Congress in passing section 9 of the Act of May 27, 1908, *supra,* not only intended that the death of the allottee would remove all restrictions against alienation of such lands by the heirs, but also it is equally clear that by the proviso of section 9, to the effect that conveyances of such heirs should be approved by the County Courts of Oklahoma, *Congress intended to thereby release the full-blood heir from all further federal supervision over a sale or lease of the lands inherited by the full-blood heir.*

Congress realized that the Indian heir was competent as a general rule to transact his own business, because for tho two years preceding the passage of the 1908 Act, conveyances of land of this class of Indians had been presented to the Secretary of the Interior for approval under the terms of section 22 of the Act of 1906. The records of the Indian Department during those two years showed that in practically all cases where the full-blood heir sold his inherited lands and their deeds of conveyances were presented to the Secretary of the Interior for approval, his investigation developed the fact that the Indian had made a fair trade and the conveyances were almost invariably approved by the Secretary of the Interior. Of course there were a few instances where the transaction was not approved but there are many instances where transactions made by white people would not be approved if presented to some disinterested third party for approval. So Congress decided that this class of Indians should be turned loose from further federal supervision and therefore inserted section 9 in the Act of 1908. While Congress contemplated the sale of lands inherited by full-blood Indians of the Five Civilized Tribes should be free of all further supervision of the Secretary of the Interior, yet in order to safeguard those few Indians who might not make a fair trade, provided that the conveyances should be approved by the County Courts of Oklaho-

ma. The supervision of the Secretary of the Interior and of all his subordinates over such conveyances were by this act rescinded and abrogated. He has no further jurisdiction or authority to supervise leases or sale of lands inherited by full-blood Indians.

If, during his lifetime, the allottee had not leased his land for oil and gas mining purposes, upon his death all restrictions and supervision to approve a lease or sale of such inherited land by the full-blood heir, insofar as the Secretary of the Interior is concerned, is rescinded. The full-blood Indian heir can sell his land or lease his land without supervision of the Secretary of the Interior. Does not the same rule apply where the land was leased during the lifetime of the allottee? Does not the death of the allottee operate to remove all further supervision over his lease, at least insofar as the Secretary of the Interior or Indian Agent is concerned? We certainly think it does. There is nothing in the Acts of Congress to the effect that where lands were leased under the supervision of the Secretary of the Interior during the lifetime of the allottee, that after the allottee's death the Secretary of the Interior shall continue to retain jurisdiction or continue to supervise the lease on such lands inherited by the heir where the heir is of full-blood. We think under the terms of the Acts of Congress that the supervision of the Indian Department ceased over these lands immediately upon the

death of the allottee, regardless of whether the land was leased by the allottee during his lifetime or not. There is nothing in the Acts of Congress that provide that this class of lands shall continue to be subject to the supervision of the Secretary of the Interior simply because the allottee happened to lease same during his lifetime.

Furthermore, the lease executed by Samuel Richard during his lifetime upon the land in controversy plainly provides, in paragraph 12, "in event restrictions of alienation shall be removed from the leasehold premises described above, this lease shall be released from the supervision of the Secretary of the Interior, such release to take effect without further agreement," and then continues to provide that all payments should thereafter be paid to the then owner of the land direct instead of to the United States Indian Superintendent. All restriction against alienation of the land covered by this lease is removed by the death of Samuel Richard, so far as the Secretary of the Interior is concerned. He has no supervision over the sale of the entire fee simple title to the land by Eastman Richard. Eastman Richard can sell the land free of all restrictions against alienation so far as the Secretary of the Interior is concerned. If the land had not been leased by Samuel Richard during his lifetime, Eastman Richard could now make a lease on same without supervision of the

Secretary of the Interior and could collect the bonus money for same, as well as collect the daily rents and profits accruing from the sale of the oil extracted from the land. If he could do this, if the lease had not been executed during the lifetime of Samuel Richard, why should he now be prevented from collecting the daily rents and profits accruing from the lands since the death of Samuel Richard? Why should the Secretary of the Interior retain jurisdiction over this lease? Indeed Eastman Richard can agree with the present holder of the lease on this land for the lessee to surrender the present lease (see paragraph 7 of lease Rec. p. 15) and Eastman Richard as sole heir of Samuel Richard can execute to the present holder of the lease on this land, a new lease providing for the payment by the lessee direct to Eastman Richard of all royalties accruing from the sale of the oil extracted from this land. The Secretary can not prevent this being done, nor could the Secretary collect the rents and royalties. There is nothing in the Acts of Congress giving the Secretary of the Interior, after the death of the allottee, authority to continue to supervise the collection of royalties accruing from lands inherited by full-blood Indian heirs, where the allottee executed a lease on the land during his life time any more than there is any provision in the Acts of Congress giving the Secretary of the Interior authority to supervise and approve the sale of the land,

or sale of a lease for oil purposes, and collection of royalties accruing from sale of oil extracted from the land, when the adult full-blood heir leases the land after the allottee's death.

In the instant case the administrators appointed by the County Court of McIntosh County, which had been by the acts of Congress vested with authority to administer the estate of the deceased lessor, became and still are the only persons entitled by law to receive these funds, and they are fully authorized by the various Acts of Congress and by the laws of the State of Oklahoma to accept, receive and administer these funds.

It would be error to hold that the defendants are now entitled to withhold from plaintiff the moneys accrued as royalties collected from the allotment of Samuel Richard, deceased, prior to the death of said Samuel Richard.

What has been stated heretofore in this brief under the propositions, *first*, that the death of Samuel Richard removed all restrictions against alienation, and, *second*, that upon the death of Samuel Richard all Governmental restrictions were removed, and *thirdly*, that irrespective of how the court should hold on these first and second propositions, yet upon the death of Samuel Richard all supervision over

the land by the Secretary of the Interior ceased, is also applicable under this proposition.

Under section 9 of 1908 Act, if any one has jurisdiction over this allotment of land since the death of Samuel Richard, it is the County Court of McIntosh County, Oklahoma, because the Act provides that the conveyance of the full-blood heir shall be approved by the County Court and if this be construed a restriction to the extent of giving any one any supervisory power over the land, other than the approval of a conveyance, that supervisory power would be in the County Court of the State of Oklahoma. The authority and power theretofore granted the Secretary of the Interior by section 22 of the 1906 Act, to supervise the conveyances was rescinded by the Act of 1908. *(United States* v. *Knight, supra.)*

During the lifetime of Samuel Richard the Secretary of the Interior had the supervisory power over his allotment because the land was restricted or inalienable and by reason of the fact that the land was inalienable by the allottee, the Secretary had the right to supervise same. The Secretary prescribed rules and regulations giving him authority to designate that the Indian Agency of Muskogee, Oklahoma, should collect the money during the lifetime of the allottee and to withhold the money, but these rulings of the Secretary cease upon the death of the allottee.

Under the Act of Congress of 1908, after the death of the allottee the supervision of the Secretary of the Interior to prevent the sale of the land by an Indian heir ceased; the heir of Samuel Richard can sell the inherited land without the consent of the Secretary of the Interior. No ruling that the Secretary of the Interior might have made during the lifetime of the allottee, attempting to continue restrictions against alienation of the land by the heirs of Samuel Richard, would be valid. If this could be done, the Secretary of the Interior, would have the right to adopt rulings that would extend restrictions on the land after the allottee's death, irrespective of the degree of Indian blood of the heir, in violation of the Acts of Congress which provide that the restrictions are removed upon the death of the allottee. No one contends that the Secretary of the Interior has such power. No one has the power to impose restrictions or extend restrictions against alienation of these lands except Congress by passing legislation to that effect. The Secretary of the Interior has no such power. Congress is the only body that can impose restrictions against the disposition of any property of the Indians of the Five Civilized Tribes. The Secretary of the Interior has no such power. To hold that the amendment to Rule 25, *supra,* adopted by the Secretary of the Interior gives his subordinate, the Indian Superintendent, authority to withhold from the heirs of Samuel

Richard, after his death, the moneys collected from sale of oil extracted from the lands before his death, would have the effect of saying that the Secretary of the Interior had the power to extend restrictions against the alienation of the property of the Indian beyond those restrictions imposed by Congress.

This amended Rule 25 can have effect only upon the *heirs* who continued, after the death of the allottee, to be subject to the supervision of the Secretary of the Interior under the PROVISIONS OF THE ACTS OF CONGRESS.

The only class of heirs, whose inherited lands continued to be subject to the jurisdiction of the Secretary of the Interior, after the death of the allottee, is those homesteads which were inherited by children, born after the Act of March 4, 1906, from allottees, enrolled as one-half or more degree Indian blood and which homesteads are *inalienable* by these children until 1931.

Lands inherited by adult full-blood Indian heirs, are not subject to supervision of the Secretary of the Interior. The death of the allottee operated to remove restrictions, with the only proviso that the conveyances of the inherited lands by full-blood Indian heirs are subject to approval by the COUNTY COURTS. The act does not provide for supervision of the Secretary of the Interior over this class of inherited lands.

Even though it should be held that the Secretary had the arbitrary right and power, after the execution of the lease and contract to change the terms of the contract as to the payments of the royalty accruing thereunder, by the adoption of the amendment to the Rule 25, on Nov. 29, 1912, we say that the Secretary had no power to make a rule and regulation which would in effect restrict the moneys and the properties of the allotted lands beyond the terms of restriction and beyond the terms of inalienability thereof as were prescribed by the Act of Congress at the time the lease was executed, the law then in force by Congress, which has not been changed to this date, was that all restrictions against alienation of the land were removed upon the death of the allottee. The Secretary of the Interior, by the amended rule, has attempted to impower himself with the right to hold these moneys as restricted properties beyond the time of the death of the allottee, by the insertion in the rule of the words "His heirs," and it will be observed that the rule did not specify that "His heirs" referred to were of full blood or were of less than full blood. Therefore if the rule is of valid force, it is just as binding on heirs of less than full blood as heirs of full blood.

Suppose for example that the Indian lessor was of full blood; that his wife is of no Indian blood; that he had a child born before March 4, 1906, who

would therefore be of one-half Indian blood; that the lessor or allottee died leaving his wife and child. His wife is not of Indian blood and his child, an adult, is of only one-half Indian blood. Section 9 of 1908 Act upon the death of the allottee removes all restrictions, so far as these heirs are concerned, yet under the amendment to Rule 25, if valid and enforceable, the Secretary has just as much right under this rule to continue to control the royalties collected from the lessor's land and to withhold payment thereof from these *unrestricted heirs*, as he would have the right to withhold payment of funds from the full blood heirs and we do not think for a moment that this court would ever hold that he has such right.

As stated before, Eastman Richard, as the sole heir of Samuel Richard, can sell the fee simple title to this land and collect the money for which he agrees to sell it, and the Secretary not only cannot prevent him from selling, but the Secretary or his subordinate, cannot control the disposition of the moneys received by Eastman Richard from the sale of the fee in the land, if he sells it. To hold that Eastman Richard can sell the entire fee in the land, but cannot collect the proceeds of sale of the oil extracted from the land is, to our minds, entirely inconsistent, and we do not anticipate that this court will sustain such a contention.

The amendment to Rule 25 does not give the defendants right to continue holding moneys collected prior to death of Samuel Richard, or to continue collecting moneys from sale of oil since the death of Samuel Richard, because upon the death of Samuel Richard supervision of the Secretary and of the defendants ceased under the provisions of section 9 of Act 1908, and the Secretary had no power to adopt a rule imposing restrictions on lands or properties beyond the time fixed by Congressional laws.

In the lower courts counsel for defendants, in support of their contention that the Secretary of the Interior has the power to adopt the amendment to Rule 25, *supra*, which was adopted on November 29, 1912, quoted and argued extensively from the case of *United States* v. *Thurston County, Nebraska*, 143 Fed. 287; however, it will be observed that the *Thurston* case, *supra*, is one where under the Act of May 27, 1902 (32 Stat. 245), the lands of the allottees of the Winnebago Tribe of Indians "were held *in trust* by the United States for a period of 25 years for the sole use and benefit of the Indian to whom the allotment shall have been made, *or in case of the decease of his heirs.*"

Under the law applicable in that case, the lands were held in trust by the United States for a full period of 25 years regardless of whether the allottee

died or not; the lands were held in trust by the United States for the full period of 25 years, both during the lifetime of the allottee as well as after his death. That law gave the specific right to hold his land in trust for the heirs of the allottee for a full period of 25 years.

There is no provision in the Acts of Congress pertaining to the affairs of the Five Civilized Tribes of Indians giving the United States power to hold the land in trust after the death of the allottee for the heirs for 25 years or any other period of time; on the contrary, the Act of Congress covering this allotment of a Creek Indian of the Five Civilized Tribes specifically provides that the *death of the allottee shall remove the restrictions against alienation.* In the *Thurston* case the Secretary had the power to approve conveyances and right to adopt rules that would apply for a full period of 25 years, and the court in that case rightly held that the money was non-taxable. But that case is clearly different from this case and is not a case in point. The *Thurston* case, in effect, only sustains the contention that the Secretary of the Interior had the right to adopt a rule giving the Indian Agent the right to withhold funds during the lifetime of Samuel Richard. We do not find fault with this, but we do contend that no rule made by the Secretary of the Interior can give him authority to supervise lands

after restrictions are removed by Congressional laws.

However, inasmuch as counsel for the appellants herein, have made no reference in their brief, to the *Thurston County* case, *supra*, we take it that they have abandoned the contention made by them in the lower courts that the *Thurston County* case is a case in point upon the question here involved.

In our case here, the Secretary of the Interior by the amendment to Rule 25 (while he may have had the power to prescribe how the moneys should be supervised during the *lifetime* of Samuel Richard while under the law the land was subject to supervision by the Secretary of the Interior) attempted to prescribe that *after* the death of Samuel Richard that he (the Secretary) could continue to supervise the property in the hands of the heirs. This was an attempt on the part of the Secretary of the Interior to adopt a ruling that would impose a restriction on a certain class of lands and property of Indians from which restrictions were removed by the Acts of Congress. The rule can have no legal or binding force or effect, as regards the withholding from the heirs, the moneys collected from this land *after* the death of Samuel Richard, because under the Act of Congress of 1908, *supra*, the supervision of the Secretary ceased upon the death of the allottee; the Secretary cannot adopt a rule that would give him pow-

er to supervise lands of a class of Indians that are not restricted, nor could he adopt a rule that would give him legal power to supervise lands after his right to supervise same under the Acts of Congress ceased.

To uphold such a contention would be to hold that the Secretary has the right to enact rules that would give him authority g r e a t e r than that prescribed by Congress. If the Secretary has the power to adopt a rule giving him right to continue, after the removal of restrictions, to supervise lands of unrestricted Indians, he would have the right to adopt a ruling to the effect that the lands will continue to be restricted, even after the time set by Congress on which the restrictions will be removed. Certainly no one has the right to extend restrictions against alienation of land except Congress. Certainly the Secretary of the Interior has no power to impose restrictions on lands or properties where under the law the restrictions have ceased under the provisions of the Act of Congress. Certainly the Secretary has no legal right to legislate rules that would have greater force and effect than the laws prescribed by Congress.

If it be held that because of the adoption of amendments to Rule 25, *supra*, the Secretary of the Interior still has jurisdiction to withhold from East-

man Richard the moneys collected from sale of oil from this land prior to the death of Samuel Richard, as well as to continue to collect moneys received for sale of oil extracted from the lands after the death of Samuel Richard, the rule would equally apply to lands inherited by Indian heirs of less than full-blood.

Certainly upon the death of the allottee all restrictions against alienation by heirs of less than full-blood are removed and the authority held by the Secretary of the Interior over the allottee during the allottee's lifetime ceased. If this be true (and it is), the authority possessed by the Secretary of the Interior during the lifetime of Samuel Richard ceased upon Samuel's death, and the fact that a deed of conveyance by the heir, Eastman Richard, requires the approval of the County Court, does not give the Secretary of the Interior any power to supervise the land or a conveyance of same. Under the act it plainly provides that the County Courts of Oklahoma, shall have the power to supervise such conveyances; and the courts have repeatedly held in construing this Act of 1908, that it was the intention of Congress that all further jurisdiction of the Secretary of the Interior to supervise such class of lands cease. See *United States* v. *Knight*, 206 Fed. 145, etc., *supra*.

The authority to hold the royalties during the lifetime of the lessor was contractual only, arising out of a stipulation in the lease, which stipulation is not binding on the heirs.

The Indian Superintendant was made a mere agent to collect the royalties during the lifetime of the lessor and upon the death of the lessor became a bailee without authority over the funds except to pay to those authorized to receive the same. Since there is no statute authorizing the withholding of the funds the superintendent and his cashier must rely on the contract. Upon familiar principles the lessor could not bind his heirs by such a stipulation.

It would be error to hold as a matter of law that the defendants are now entitled to withhold from plaintiff the moneys collected by them as royalty from the allotment of Samuel Richard, deceased, which accrued from sale of oil extracted SINCE the death of Samuel Richard.

This action is not only to recover the moneys collected by the defendants during the lifetime of Samuel Richard, upon the ground that, after the death of Samuel Richard, his father, Eastman Richard, as his sole heir is entitled to handle this money inherited by him without supervision of the Secretary of the Interior, or his subordinate, *but is also*

to recover the moneys collected by the defendants from sale of oil extracted from this land since the death of Samuel Richard, as well as for an order restraining the defendants from continuing to collect these rents and royalties.

After the death of Samuel Richard all authority of the defendants or of the Secretary of the Interior to supervise a sale by Eastman Richard of the entire fee title in this land, was immediately rescinded by virtue of section 9 of the Act of 1908, *supra.* Eastman Richard having this right to convey his land and collect the proceeds of sale without supervision of the defendants, certainly had and has the right to sell his royalty oil (or let his lessee sell same) and collect the proceeds of sale of the same, without supervision of the defendants, insofar as the sale of oil extracted and sold *since* the death of Samuel Richard, is concerned. It is a well established principle of law "that the greater includes the less." We can certainly see no consistent reasoning for a contention that admits in one breath that Eastman Richard can sell the entire fee in the land but in the same breath denies that Eastman Richard can sell his oil and collect moneys representing proceeds of sale of oil extracted from the land—both without the supervision of the Secretary of the Interior or the defendants.

Much that has been said above in this brief relative to the land not being "restricted" land, nor subject to governmental restrictions, as well as the fact that the moneys collected prior to the death of Samuel Richard are not subject to be withheld by defendants after the death of the allottee, Samuel Richard, in spite of Rule 25, is applicable under this proposition, because if this court holds that the contentions of plaintiffs are correct in any one of these points, plaintiffs are correct in this assertion. However, even should this land still be considered as restricted land, in the sense intended by Congress, or still "subject to government restrictions" and should it further be held that the amendment to Rule 25, *supra*, gives the defendants authority to withhold the moneys collected *prior* to the death of Samuel Richard, *yet there is absolutely nothing, either in the Acts of Congress or in the rules adopted by the Secretary of the Interior that gives the defendants the right to collect the royalties accrued and now accruing since the death of Samuel Richard.* In the first place, upon the death of Samuel Richard, all supervision of the defendants and of the Secretary of the Interior ceased by virtue of Sec. 9, *supra*, for even should it be determined that the proviso to Sec. 9 requiring the deed of conveyance of the land of the heir to be approved by the County Court is a federal restriction, simply because Congress in

its law designated the County Courts of Oklahoma should approve such conveyances, yet there is no law that provides that the land shall be subject *to supervision of the Secretary of the Interior nor of the defendants;* in fact, the law, plainly to the contrary, provides that the supervising power given by the Act of 1906 to the Secretary of the Interior to approve such conveyances on such lands is now since the Act of 1908 vested in the County Courts of Oklahoma. Therefore, neither the defendants nor the Secretary have any right to supervise a sale of this land after death of Samuel Richard, and by the same reasoning, they have no right to supervise the collection of the royalties accruing from the sale of oil extracted and sold *since* the allottee's death; in the second place, the amendment to Rule 25, *supra*, even though made while the land was restricted land has not sufficient legal effect to hold moneys accruing from lands which after the death of the allottee are not subject to control of the Secretary of the Interior.

To hold that Eastman Richard, the sole and only heir of Samuel Richard, cannot collect the moneys representing the sale of oil extracted and sold from this inherited land, since the death of Samuel Richard, as well as collect the moneys now daily accruing, and that will continue to accrue, from sale of oil extracted from this land, and to say that the

defendants can collect the same and withhold same from plaintiffs is, in substance, to say to Eastman Richard:

> "Eastman Richard, you have the legal right to sell this valuable land constituting the allotment of Samuel Richard, which you inherited at his death, and you can probably receive $500,000.00 for a sale of same; and you can make this sale and receive this money free of all supervision of the Secretary of the Interior and invest the money as you desire, free of all supervision,"

BUT

> "If you do *not* sell this valuable inheritance, you cannot legally collect the rents and royalties daily accruing from this land, but the Secretary of the Interior or the defendants, can and will continue to collect same and hold the money as long as they feel disposed to hold it."

"You can sell the fee in the land but cannot sell the oil extracted from the land." This would mean that if Eastman Richard ever expects to handle this money which rightfully belongs to him he will be forced to sell his valuable oil lands in order to get any benefits from his inheritance.

After the death of Samuel Richard, Eastman Richard had numbers of opportunities to sell this land for a valuable money consideration to be paid direct in his hands. Had he desired he could have accepted these attractive offers to purchase his land,

and could have executed his conveyance, had same approved by the County Court of McIntosh County, Oklahoma, and received his money and have same today and receive the benefit from same—all without either supervision, sanction or approval of the Secretary of the Interior or the defendants. Eastman Richard, being the shrewd business man that he is, no doubt, figures that as a good business proposition and investment, the collection of the daily royalties due him as the owner of the land is a far better business policy. If the oil companies can afford to pay a large price for the fee in the land and expect to make a large profit in the transaction by the collection of the proceeds of the sale of the one-eighth (1/8) royalty oil daily extracted from the land, which is due the owner of the fee in the land, no doubt as a business matter, Eastman Richard figures that he can hold the title to the land and collect his royalties and realize more money from his inheritance. If it be held that he cannot collect these royalties, HE WILL BE FORCED AND COMPELLED TO SELL HIS LAND, in order to get any benefit from his inheritance. Why should he be compelled to sell his valuable inheritance at a sacrifice in order to collect the benefits of his inheritance? Why place such a construction upon the laws of Congress, as require such as this?

Conclusion.

In conclusion, we must earnestly urge to this court that we believe that upon the death of Samuel Richard, the defendants had no further right to collect the moneys accrued since his death nor those moneys which are daily accruing and which will continue to daily accrue from the sale of oil extracted and being extracted from this valuable tract of land, but we believe that Eastman Richard, as the sole heir of Samuel Richard is entitled to collect these moneys; furthermore, that in addition to this we believe that plaintiffs are entitled to collect from the defendants all moneys held by them representing proceeds of sale of oil extracted from this land *prior* to the death of Samuel Richard; that upon Samuel Richard's death the defendants' authority to hold this money ceased; furthermore, we believe that upon the death of Samuel Richard all further supervision over this land by the Secretary of the Interior, and of the defendants, ceased by virtue of the Act of May 27, 1908, *supra*, and for the further reason that the amendment to Rule 25 is void as discussed in our second proposition, and we must respectfully ask this court to affirm the judgment rendered by the Circuit Court of Appeals in case No. 313 (Rec., pp. 43-47) and order a judgment to be rendered in favor of the plaintiffs as prayed for in the

petition in this cause, and to dismiss the appeal in case No. 563.

Respectfully submitted,

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April 14, 1919.

Counsel for Parties.

PARKER, PARKER, AS SUPERINTENDENT FOR THE FIVE CIVILIZED TRIBES, ET AL. *v.* RICHARD ET AL., CO-ADMINISTRATORS OF RICHARD.

APPEALS FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

Nos. 313, 563. Argued April 24, 1919.—Decided June 2, 1919.

Under § 9 of the Act of May 27, 1908, c. 199, 35 Stat. 312, providing "that the death of any allottee . . . shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee," lands of a deceased full-blood allottee, descended to a full-blood heir and not conveyed with the approval of such court, are "restricted lands" in the sense of § 2 of the same act, which provides that leases of "restricted lands" for oil, gas or other mining purposes may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by him, and not otherwise. P. 238.

The fact that by the proviso of § 9, *supra*, Congress authorized a state court—practically as a federal agency—to sanction conveyances, does not affect the force and operation of the restrictions while they remain. *Id.*

During the continuance of such restrictions, the duty to protect the interests of the full-blood heir by supervising the collection, care and disbursement of royalties arising from an oil and gas lease made under § 2, remains with the Secretary of the Interior. P. 239.

245 Fed. Rep. 330, reversed.

THE case is stated in the opinion.

Mr. Assistant Attorney General Kearful for appellants.

Mr. Britton H. Tabor and *Mr. James B. Lucas* for appellees.

MR. JUSTICE VAN DEVANTER delivered the opinion of the court.

This is a suit to enjoin two representatives of the Secretary of the Interior—the Superintendent and the Cashier of the Five Civilized Tribes—from collecting future royalties on an oil and gas lease of land allotted to a Creek Indian and to compel them to surrender royalties already collected. In the District Court there was a decree for the defendants, which the Circuit Court of Appeals reversed, one judge dissenting. 245 Fed. Rep. 330. The District Court then complied with the mandate by entering a decree for the plaintiffs, and this the Circuit Court of Appeals declined to disturb. Appeals from the decisions of the latter bring the case here.

The questions to be considered are whether the land covered by the lease is land from which restrictions on alienation have been removed, and whether the supervisory authority of the Secretary of the Interior over the collection, care and disbursement of the royalties has terminated.

The land was part of the Creek tribal lands and was allotted under the Acts of March 1, 1901, c. 676, 31 Stat. 861, and June 30, 1902, c. 1323, 32 Stat. 500, the allottee being a minor and an enrolled Indian of the full blood. In 1912, while he was yet a minor, the oil and gas lease was given by his guardian, the lease being approved by the court having jurisdiction of his estate and by the Secretary of the Interior. The allottee died in 1916, while still a minor, and left his father, a full-blood Creek Indian, as his only heir. Approximately $280,000 in royalties have accrued under the lease—part before and part since the allottee died. These royalties have been collected by the defendants pursuant to the terms of the lease and the regulations of the Secretary of the Interior and are being

held by them in trust under a provision in the regulations which authorizes them to retain and care for such funds "until such time or times as the payment thereof is considered best for the benefit of said lessor, or his or her heirs." The plaintiffs are the administrators of the estate of the deceased allottee.

By § 1 of the Act of May 27, 1908, c. 199, 35 Stat. 312, Congress declared that "all allotted lands of enrolled full-bloods, and enrolled mixed-bloods of three-quarters or more Indian blood, including minors of such degrees of blood, shall not be subject to alienation, contract to sell, power of attorney, or any other incumbrance prior to April twenty-sixth, nineteen hundred and thirty-one, except that the Secretary of the Interior may remove such restrictions, wholly or in part, under such rules and regulations concerning terms of sale and disposal of the proceeds for the benefit of the respective Indians as he may prescribe." There was no such removal in this instance and it is conceded that at the date of the lease and at the time of allottee's death the alienation of the land was still restricted.

By § 2 of the same act Congress declared that "leases of restricted lands for oil, gas or other mining purposes . . . may be made, with the approval of the Secretary of the Interior, under rules and regulations provided by the Secretary of the Interior, and not otherwise." The lease was given under this provision and was to run for a term of ten years and as much longer as oil or gas might be found in paying quantity. It provided, conformably to the regulations, that the Secretary of the Interior, through his representatives, should supervise all operations under the lease, that the royalties thereunder should be paid to his representatives, that, with exceptions not material here, the regulations as then or thereafter in force should be deemed part of the lease, and that in the event restrictions on alienation should be removed the

supervision of the Secretary of the Interior over the lease should be relinquished at once and all further royalties thereunder should be paid to the lessor or the then owner of the lands.

One of the regulations prescribed by the Secretary deals with the payment to lessors, their guardians, heirs, etc., of moneys collected as royalties by his representatives and specially authorizes the latter, as before indicated, to withhold such payment in whole or in part for such time as may be in accord with the best interests of the lessor or his heirs. It is under this regulation that the royalties already collected are being retained. The record indicates that a considerable portion of them has been invested in interest-bearing bonds of the United States, but as the propriety of this is not called in question, it may be passed without further notice.

By the Act of 1908, which imposed the restrictions on alienation and contained the leasing provision, Congress further declared, in § 9, "that the death of any allottee . . . shall operate to remove all restrictions upon the alienation of said allottee's land: *Provided*, That no conveyance of any interest of any full-blood Indian heir in such land shall be valid unless approved by the court having jurisdiction of the settlement of the estate of said deceased allottee." In the absence of the proviso it would be very plain that on the death of the allottee all restrictions on the alienation of the land allotted to him were removed. But the proviso is there and cannot be disregarded. It obviously limits and restrains what precedes it. In exact words it puts full-blood Indian heirs in a distinct and excepted class and forbids any conveyance of any interest of such an heir in such land unless it be approved by the court named. In other words, as to that class of heirs the restrictions are not removed but merely relaxed or qualified to the extent of sanctioning such conveyances as receive the court's approval. Con-

veyances without its approval fall within the ban of the restrictions. That the agency which is to approve or not is a state court is not material. It is the agency selected by Congress and the authority confided to it is to be exercised in giving effect to the will of Congress in respect of a matter within its control. Thus in a practical sense the court in exercising that authority acts as a federal agency; and this is recognized by the Supreme Court of the State. *Marcy* v. *Board of Commissioners*, 45 Oklahoma, 1. Plainly, the restrictions have the same force and operate in the same way as if Congress had selected another agency, exclusively federal, such as the Superintendent of the Five Civilized Tribes.

In cases presenting the question whether lands inherited from allottees by full-blood Indian heirs are freed from restrictions by § 9, and thus brought within another provision in the same act declaring that land "from which restrictions have been or shall be removed" shall be taxable and subject to other civil burdens, the Supreme Court of the State and the federal court of that district have both held that under the proviso such land remains restricted in the hands of the full-blood heirs, and so is not within the taxing provision. *Marcy* v. *Board of Commissioners, supra; United States* v. *Shock*, 187 Fed. Rep. 870.

Entertaining a like view of the proviso, we conclude that the land covered by the lease is still restricted land.

As to the other question this is the situation:

Under the Act of 1908, as already shown, leases of "restricted lands" for oil and gas mining may be made with the approval of the Secretary of the Interior, under regulations prescribed by him, "and not otherwise." The present lease was made and approved under that provision. The land was then restricted and the restrictions have not since been removed. Thus the event which the regulations and the lease declare shall terminate the supervision by the Secretary of the Interior of the

collection, care and disbursement of the royalties has not occurred. Nor has the occasion for some supervision disappeared. The heir is a full-blood Indian, as was the allottee, and is regarded by the act as in need of protection, as was the allottee. In the absence of some provision to the contrary the supervision naturally falls to the Secretary of the Interior. Rev. Stat., §§ 441, 463. *West* v. *Hitchcock*, 205 U. S. 80, 85. And see *Catholic Bishop of Nesqually* v. *Gibbon*, 158 U. S. 155, 166. There is nothing to the contrary in the leasing provision or in any other of which we are aware. True, it is possible under the proviso in § 9 for the heir, if the court approves, to sell and convey his interest in the land. But that has not been done, and it well may be that the heir will remain the owner until the restrictions expire in regular course—April 26, 1931. There is nothing in the proviso indicating that it is intended in the meantime to take from the Secretary or to commit to the court the supervision of matters pertaining to the lease or the royalties. A purpose to do that doubtless would be plainly expressed.

In this situation we think the authority of the Secretary of the Interior to supervise the collection, care and disbursement of the royalties has not terminated.

Criticism is made of some of the regulations, but all that are material here seem to be well within the limits of the Secretary's authority, and the acts of his representatives in respect of the lease and the royalties, so far as questioned here, seem to be well within the regulations.

It results that the original decree in the District Court was right and should stand, and that the second decree in that court and those in the Circuit Court of Appeals must be reversed.

Decrees reversed.